

14.11.2024

Present: Sh. Amit Kumar, Counsel for the plaintiff.
Sh. Rajiv Kumar Sharma, Counsel for the defendant
(through V.C.).

1.) Counsel for the defendant presses his application dated 28.08.2024 under Order 7 Rule 11 CPC.

Case of the applicant/defendant:

2.) It is argued that para 4 of the plaint shows that business dealing with the plaintiff and the defendant are from period of April, 2010 to June, 2011. Present suit filed in October, 2014 is barred by limitation.

Case of the non-applicant/plaintiff :

3.) Per contra, counsel for plaintiff submits that this arguments has already been dealt with vide order dated 24.08.2015 wherein it has been held as under:

“It is argued by the Ld. Counsel for the defendant that the suit of the plaintiff is time barred and the same may kindly be dismissed.

Having heard the submissions made by the counsel for the parties and after gone through the case file this Court is of the considered view that during the course of arguments, the defendant has admitted the e-mail dated 11.10.2011 but he has denied to acknowledge the outstanding. If the Court consider the e-mail dt. 11.10.2011, then the suit ought to have been filed on or before 11.10.2014 and the present suit has been filed on 09.10.2014. So far as the admissibility of the e-mail

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dt. 11.10.2011 is concerned the same can only be decided after leading the evidence of the parties. Therefore, at this stage, the suit of the plaintiff cannot be dismissed by deciding that the same is beyond period of limitation and the point of limitation required evidence.”

4.) It is argued that limitation is a mixed question of law and facts and issue no. 2 has already been framed regarding limitation on 21.04.2015.

Findings:

5.) Heard. File perused.

6.) Perusal of the record shows that in para 4 of the plaint, it is the case of the plaintiff that vide e-mail dt. 11.10.2011, defendant acknowledged his liability. The suit is filed on 09.10.2014 and the same cannot be barred by limitation. It is settled law that at the stage of rejection of plaint, only averments in the plaint are to be seen (reliance is placed upon case titled as Saleem Bhai v. State of Maharashtra, reported in (2003) 1 SCC 557, decided by the Hon'ble Supreme Court).

7.) It is rightly contended by counsel for plaintiff that these arguments have already been dealt with vide order dated 24.08.2015.

Further, limitation is a mixed question of law and facts and issue no. 2 has already been framed regarding limitation on 21.04.2015. In considered opinion of this Court, the issue no. 2 will be decided during final arguments in the suit after full evidence has been led by the parties. The plaint cannot be rejected at this stage. **Application under Order 7 Rule 11 CPC is dismissed. However, nothing stated in this order with effect the merits of the main suit.**

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Sh. Rohit Maan from office of Registrar of Society, Alipur is present but discharged unexamined as counsel for the plaintiff states that the documents brought by the witness are not duly stamped and witness has not brought any authority letter. Witness states that he will bring authority letter on NDOH alongwith documents.

Diet money of Rs. 500/- has been paid by the counsel for the plaintiff to the witness.

Sh. Rohit Maan from office of Registrar of Society, Alipur is bound down for NDOH.

At request, now to come up for remaining PE on 24.01.2025.

(VIKRAM BALI)
DISTRICT JUDGE-2/NORTH/ ROHINI
COURT/DELHI/14.11.2024