IN THE COURT OF ADDITIONAL DISTRICT JUDGE
SHAHDARA DISTRICT, KARKARDOOMA COURTS: DELHI.
Presided by : SH. VINEET KUMAR.

C.S No. 2073/16

IN THE MATTER OF
Smt. Geeta Tyagi
W/o Sh. Naresh Kumar Tyagi
R/o A/4675, Gali No. 4,
Balveer Nagar, Shahdara,
Delhi.
........**Plaintiff**

Versus

1) Sh. Satya Prakash Sharma
S/o Late Sh. Rama Nand Sharma
2) Smt. Rajeshwari Devi
W/o Sh. Satya Prakash Sharma
3) M/s Maa Chamunda Motors,
All R/o 7/3, East Jyoti Nagar,
Delhi 110093
Through its Prop. ....**Defendants**

[ON APPLICATION U/O VII RULE 11 OF CPC]

ORDER

1. Plaintiff has filed the present suit for recovery of money amounting to Rs.19,42,076/- against the defendant.

2. Brief facts as stated in the plaint are that plaintiff is the registered owner of vehicle i.e. Tavera bearing No. DL-1YA-5104, Chasis No. 30F34060, Eng. No. MA6AB6G766HD and she has authorized her husband Sh. Naresh Kumar Tyagi to deal with the said vehicle.

3. It is stated that defendants are in the business of transport and running a firm namely "Maa Chamunda Motors" at 7/3, East Jyoti Nagar, Delhi. On 25.06.2006, the aforesaid vehicle was given to the defendants on hire vide agreement dated 16.06.2006 with the condition that the defendants will use the said vehicle and an amount of Rs.20,000/- p.m. will be paid by them to the plaintiff.

4. It is further stated that at the request of defendants, two credit cards i.e. one of HDFC bearing no. 517635103363859 and another of ICICI Bank bearing no. 447741787716 were handed over to the defendants at the time of handing over the said vehicle for making payment of diesel/fuel. It was also agreed that after depositing installments of vehicle to the bank from where loan facility was availed by the plaintiff for purchasing the said vehicle, the defendants will pay remaining amount to the plaintiff. However, except paying some lump sum amount, defendants neither deposited any installment in bank nor paid any amount to the plaintiff.

5. It is further stated that the plaintiff had paid installments of bank till June, 2008 and on account of non payment of installments by defendants, plaintiff requested them to deliver the said vehicle, but defendants assured the plaintiff to make payment of installments in future. Thereafter, defendants made payment of Rs.1,60,000/- till May 2008, Rs.60,000/- in December 2006, Rs.70,000/- in October 2007 and Rs.30,000/- in May 2008 to the plaintiff against the outstanding amount of Rs.4,60,000/- till that time.

6. It is further stated that again on the various requests of plaintiff, defendants paid Rs.40,000/- in January 2009 and an amount of Rs.4,20,000/- left to be paid alongwith credit cards user charges of Rs.64,750/- and Rs.2,68,237 @ 24% p.a. interest p.a. from January 2009 till December 2009.

7. It is further stated that plaintiff served legal notices upon the defendants for payment of Rs.7,52,987/- and Rs.12,83,851/- on 20.02.2013 and 01.04.2013, which were received back with the report "refused". Thereafter, in the month of June, 2009, husband of plaintiff requested the defendants to make payment and return the said vehicle to which defendants parked the said vehicle in the garage at Kashmir Singh Motors for repair.

8. It is further stated that despite various requests, defendants failed to hand over the said vehicle to the plaintiffs, therefore, one complaint was filed by plaintiff on 11.01.2013 in the concerned PS and a legal notice dated 01.11.2014 was also issued by plaintiff against defendants for payment of Rs.11,52,542/-. However, defendants refused the legal notice sent by the plaintiff.

9. The defendants filed written statement wherein it has been stated that in the month of May 2006, the plaintiff and her husband asked the defendants no. 1 & 2 for a loan of Rs.6 lacs for the purchase of suit vehicle as they were not having sufficient amount in their bank accounts to make payment for said purchase.

10. It is further stated that after considering their requests, the defendants no. 1 & 2 gave an amount of Rs.6,06,550/- from Bank Account no. SB 13949 of the defendant no .2 to the plaintiff and her husband between 23.05.2006 to 30.05.2006 in following manner :-

Rs.2,11,550/- on 23.05.2006

Rs. 2,35,000/- on 25.05.2006

Rs. 1,60,000/- on 30.05.2006

11. Thereafter, defendants no. 1 & 2 came to know that plaintiff and her husband had diverted the loan amount taken from defendant no. 2 to their other uses and plaintiff purchased the said vehicle by making down payment of Rs.1,31,327/- on 25.05.2006 to Shiva Motors, Ghaziabad and taking loan of Rs.5,18,000/- from ICICI Bank Ghaziabad.

12. It is further stated that on failure of making payment by plaintiff and her husband, the defendants no.1 & 2 took away the said vehicle for part recovery of their loan amount in terms of power of attorney dated 01.03.2009 executed by plaintiff in favour of defendant no. 1. However, the plaintiff and her husband cleverly made liable the defendant no. 1 to pay outstanding loan amount to ICICI Bank to which an objection was raised by defendants and plaintiff and her husband agreed to foreclose the loan of said vehicle but the same was never done.

13. It is further stated that the plaintiff has filed the present suit on the basis of false averments, hence it has been prayed that the present suit may be dismissed with heavy costs.

14. Thereafter, an application on behalf of defendants under Order VII Rule 11 (d) has been filed wherein rejection of plaint has been sought on the ground that the same is barred by law of limitation.

15. No reply to the aforesaid application was filed on behalf of plaintiff and ld. counsel for plaintiff straight-away argued on the same.

16. Before proceeding any further, it is relevant to discuss the Law of Rejection of Plaint as enshrined under Order 7 Rule 11 CPC.

Order 7 Rule 11 (d) CPC is reproduced herein-

Rejection of Plaint - The plaint shall be rejected in the following cases:-

(d) where the suit appears from the statement in the plaint to be barred by any law.

17. For deciding an Application under Order 7 Rule 11 CPC, it is well settled law that Court has to examine only the averments made in the plaint. The plaint is required to be read as a whole and the pleas taken by the defendants in the written statement as well in the application under Order 7 Rule 11 CPC cannot be made basis to decide the application.

18. The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress the fraud and perjury, to quicken the diligency and to prevent oppression. The

statute i.e. Limitation Act is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice.

19. Clause (d) of Order VII Rule 11 CPC speaks of suit, as it appears from the statement in the plaint to be barred by law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Clause (d) of Rule 11 of Order VII CPC applies in those cases only where the statement made by the Plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. In Raptakos Bett & CO. Ltd. vs. Ganesh Property {(1998) 7 SCC 184)}, it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII CPC was applicable.

> *In CHURCH OF CHRIST CHARITABLE TRUST AND EDUCATIONAL CHARITABLE SOCIETY Versus PONNIAMMAN EDUCATIONAL TRUST {2012 8 SCC 706}, the Hon'ble Apex Court in Para 11 observed thus ;*
>
> *"11. This position was explained by this Court in Saleem Bhai vs. State of Maharashtra, in which, while considering order 7 rule 11 of the code, it was held as under :*
>
> *"9. A perusal of order 7 rule 11 CPC makes it clear that the relevant facts for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant or at any time before conclusion of trial. For the*

purpose of deciding an application under clause's (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the plea taken by the defendant in the written statement would be wholly irrelevant at that stage."

20. Similar view was taken by the Hon'ble Apex Court in Mayur [H.K.] Ltd. and others vs. Owners & Parties, Vessal M.V. Fortune Express and others [(2006) 3 SCC 100] and also T. Arivandandam vs. T.V. Satypal and another [(1977) 4 SCC 467].

21. I have heard the arguments on behalf of both the parties and perused the material available on record.

22. It has been argued on behalf of the defendants that the claim sought by the plaintiff pertains to period w.e.f. June 2006 to December 2009. It is further stated that if the starting point of limitation is deemed to be December 2009 then also the period of limitation would have expired in December 2012 as the period of limitation for filing a suit for recovery of money is three years. It is further argued that plaintiff has shown cause of action from date of giving complaint to DCP North East and from date of legal notice which is not tenable in law and the same does not give any cause of action to the plaintiff. It is further argued that the plaintiff cannot claim rent and cost of vehicle at the same time as either the plaintiff may have given the vehicle on rent or may have sold it.

23. It has been argued on behalf of plaintiff that for rejection of plaint under Order VII Rule 11 CPC only the contents of plaint are

to be seen as per law. It is further argued that there is a copy of original agreement between the parties on record to substantiate the claim of plaintiff for recovery of the suit amount. It is further argued that issues have already been framed in this matter, hence, the application under Order VII Rule 11 (d) be dismissed.

24. From the perusal of arguments and counter arguments, it is clear that disputed question of facts are involved which can only be ascertained and determined after leading the evidence. It is a settled law that limitation is a mixed question of law and fact. Thus, the issue regarding the present suit being barred by the law of limitation is a triable issue and the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11 (d) CPC and therefore, the application filed by the defendants is dismissed as the rejection of plaint would tantamount to prejudging a fact which is yet to be proved.

25. However, since limitation is a mixed question of law and fact and the plaintiff has specifically pleaded that the present suit is within limitation, so this ultimately raises an issue and requires evidence. The controversy with respect to law of limitation is kept open with the observation that it would be disposed of on merits after the evidence of both the parties would come on record particularly on the issue of limitation. Consequently, an additional issue is framed which would cover the plea of limitation as is being raised by the counsel for the defendant at this subsequent stage.

Additional issue no. 1 :-

Whether the suit of the plaintiff is barred by law of limitation. If so, its effect ? OPD

26. With these observations, the application filed by the defendants is disposed of.

(Vineet Kumar)
Additional District Judge-01
Karkardooma, Delhi
14.11.2019

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