

IN THE COURT OF PRINCIPAL DISTRICT &
SESSIONS JUDGE, BELAGAVI

Dated this the 18th day of September 2024

PRESENT

Sri T. N. Inavally, B.A.L., LL.B.
Principal District & Sessions Judge,
Belagavi

Com. OS No.9/2021

Plaintiff: Basavaraj S/o Shivaji Menasi
Age: 40 years, Occupation: Business,
R/o K. C. Nagar, II Cross, Bailhongal,
Taluk: Bailhongal, District: Belagavi
(Represented by Sri R. S. Mathapathi, Advocate)

Vs.

Defendant: Smt. Manjula W/o Pundalik Jorapur
Age: 56 years, Occupation: Business,
R/o Raghavendra Nivas,
Near Ishwar Resort,
Opposite GRBC, Laxmi Extension,
Gokak, Taluk: Gokak, District: Belagavi.
(Represented by Sri S. R. Sattigeri, Advocate)

ORDER ON IA No.IV

This application is filed by the defendant under Order VII Rule 11(d) of Civil Procedure Code ('CPC' for short) praying for an order to reject the plaint as the suit is hopelessly barred by limitation in the interest of justice.

2. The defendant has filed his affidavit along with the application submitting that plaint averments clearly disclose that the suit is hopelessly barred by limitation, especially in view of the cause of action pleaded in para No.8 of the plaint. Therefore, the plaint is liable to be rejected. The contention in written statement to that effect is taken and same need not be gone into. Only on the basis of plaint averments it unequivocally demonstrates that the suit is filed beyond the period of limitation. Hence, continuation of the suit would result in abuse of process of law and therefore, the defendant has prayed for rejection of plaint as the suit is barred by limitation.

3. The plaintiff has filed his objections to the application submitted that the present application is without there being any material and same is not tenable under law. The affidavit filed along with the application at no point of time would show any material to establish that there are grounds for rejection of the plaint. It is false that the suit is filed beyond the period of

limitation and continuance of the suit would lead to abuse of process of law. On the other hand, the defendants has filed frivolous application abusing process of law without there being any ground. It is pleaded in paras 4 and 5 of the plaint that the plaintiff and the defendant settled the accounts on 14.07.2017 and the defendant agreed to pay the amount of Rs.29,00,000/- within 5 months thereafter and the defendant issued the cheque for the said amount on 11.12.2017, but same came to be dishonored. The plaintiff pleaded in para 8 of the plaint that the cause of action arose on 11.12.2017 when the defendant issued the cheque and same came to be dishonored and he did not pay the said amount. Further, the plaintiff moved application for pre-institution mediation for settlement of the matter before the District Legal Services Authority, Belagavi ('DLSA' for short) on 25.11.2020 as required under Section 12A of the Commercial Courts Act, 2015 prior to filing of the suit within the period of limitation. The defendant did not appear before the DLSA in spite of service of notice and the matter was disposed of on 22.02.2021 and DLSA issued Non

starter report as contemplated under Section 12A(3). The period during which the parties remained occupied with pre-institution mediation shall not be computed for the purpose of limitation under Limitation Act. As such, the period from 25.11.2020 to 22.02.2021 i.e., 89 days is excluded from limitation. The present suit came to be instituted on 12.03.2021. Hence, the suit is filed within the period of limitation. Further, it is well settled principle of law that issue of limitation is mixed question of law and facts and same cannot be decided as preliminary issue or for the purpose of rejection of plaint. It requires full pledged evidence and trial to decide the same and hence, at this stage this application is not tenable and same is liable to be dismissed. The defendant has no any right to move such application on the point of limitation at this pre trial stage. The Courts are empowered to entertain subject matter of the suit only when the Court has no jurisdiction to entertain subject matter of the suit. If the application is allowed, it amounts to deciding the mixed question of facts and law and it leads to heavy loss to the

plaintiff and also leads to multifariousness of limitation. On the other hand, no loss or hardship will be caused to the defendant, if the application is rejected. Therefore, the plaintiff has prayed for dismissal of the application with costs.

4. Heard the arguments of the learned counsel for the defendant and also the learned counsel for the plaintiff on the application. The learned counsel for both the parties have also relied some citations respectively in support of their contentions. Perused the relevant materials on record. Now the points that arise for my consideration are:

1. *Whether the defendant has made out sufficient ground to for rejection of plaint as the suit prima facie barred by limitation, as sought for in the application?*
2. *What order?*

5. After hearing the arguments of the learned counsel for both the parties and on considering the relevant materials on record, my findings on the above points are as hereunder:

Point No.1	:	In the negative
Point No.2	:	As per final order
		For the following:

REASONS

6. **POINT NO.1:** The contention of defendant in the application is that by the plaint averment itself, the suit is hopelessly barred by limitation and therefore, the plaint shall be rejected as barred by limitation. The learned counsel for the defendant has drawn the attention of this Court to the relevant portion in para 8 of the plaint which reads thus:

“The cause of action to file present suit arose on 11.12.2017 when defendant agreed to pay suit amount of Rs.29,00,000/- by issuing cheque No.02046192 dated 11.12.2017 drawn on Union Bank of India, Bailhongal Branch and same is continued when defendant did not pay the said amount as per the notice dated 15.12.2017 issued by plaintiff to the defendant.”

As submitted by the learned counsel for the defendant, the suit is filed on 12.03.2021. Therefore, if the above said plaint averments are prima facie taken into consideration, it would be clear that the suit is filed beyond the period of three years from the date of cause of action of the suit and hence, it is barred by limitation.

7. However, as pointed out by the learned counsel for the plaintiff, in para 9 of the plaint it is mentioned that:

The present suit is well within time. The transaction between plaintiff and defendant was settled on 14.07.2017 and defendant agreed to pay the settlement suit amount in the month of December 2017 by issuing post dated cheque 02046192 dated 11.12.2017 drawn on Union Bank of India, Bailhongal Branch. Therefore from the date of issuance of said cheque i.e., 11.12.2017 the present suit is well within time.

As per the para 9 of the plaint also, the cause of action for the suit is mentioned as 11.12.2017, which is beyond the period of limitation, if the date of filing of the suit is considered.

8. The contention of the plaintiff is that earlier to filing of the suit, he approached DLSA for pre-institution mediation as contemplated under Section 12A of the Commercial Courts Act and the DLSA issued Non-Starter Report and hence, the period during which the matter was pending before DLSA for pre-institution mediation shall be excluded and if such period is excluded, the suit is within the period of limitation.

9. However, as pointed out by the learned counsel for the defendant, the fact that the plaintiff has approached the DLSA for pre-institution mediation is not stated in the plaint. On the other hand, the contention of the learned counsel for the

plaintiff is that due to Covid-19 pandemic the suit is not filed within time. The period from 15.03.2020 till 20.02.2022 stands excluded for the purpose of limitation under any general or special laws in respect of all judicial proceedings as per the order of the Hon'ble Apex Court in Misc. Application No.21/2022 in Sue motu Writ Petition No.3/2020 and hence, if the said period is taken into consideration, the suit is filed well within the period of limitation.

10. Per contra, the learned counsel for the defendant has drawn the attention of this Court to the provision of Order VII Rule 6 of CPC which reads thus:

Grounds of exemption from limitation law. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed.

In the case on hand, the ground upon which exemption from law for limitation is claimed by the plaintiff is not mentioned in the plaint. The learned counsel for the defendant has drawn the attention of this Court to the provision of the decision of

Hon'ble High Court of Patna **1991 0 AIR (Pat) 267 (Sudhir Kumar Pandey v/s Bank of India)** in which it is held that:

“Suit filed for realization of loan advanced by the bank on 6.05.81 through the original document was executed on 5.3.76. Subsequent signature was obtained on blank sheets alleged by the defendant but denied by plaintiff-bank. Grounds for exemption from the law of limitation are to be stated in the plaint. Provision is mandatory in nature. It must be in existence at or before the time of filing of the plaint.

The learned counsel for the defendant has also relied on the decision of the Hon'ble Apex Court reported in **1999 0 Supreme (Ker) 186 (Patel Babu Lai Pranalal & Bros. v/s Pameric Export International)**, in which referring to the earlier decision, it is held that:

The provisions of Order VII Rule 6 of CPC are mandatory in nature and whenever the plaintiff wants to seek exemption from the operation of law of limitation, he must expressly state in the plaint the grounds on which exemption is sought for.

Further, the learned counsel for the defendant has drawn the attention of this Court to the decision of Hon'ble Apex Court reported in **(2012) 8 Supreme Court Cases 706 (Church of Christ Charitable Trust and Educational Charitable Society v/s. Ponniamman Educational Trust)**, in which referring to Order VII Rule 11 of CPC it is held that:

“Rejection of plaint is permissible whether defendant sought rejection of plaint or non fulfillment of other require.”

It is also held in the said decision that:

“If the suit is barred of limitation plaint must conferred to Order VII Rule 6 and subsequently played ground on which the contention of bar is claimed.”

As submitted by the learned counsel for the defendant in the case on hand the plaintiff has not mentioned in the plaint the law on which he has claimed exemption of period of limitation.

11. The learned counsel for the defendant has also relied on the decision of Hon’ble Apex Court in **(2020) 2 Supreme Court Cases 677 (Shanti Conductors Private Limited v/s. Assam State Electricity Board and others)**, in which it is held that:

“Necessity of proviso to Or. 7 R.6 permitting exemption from law of limitation on any ground not set out in plaint, so long as such ground was not inconsistent with grounds set out in plaint. In present case however, grounds asserted in the pleadings were inconsistent with the plea of exemption.”

This would show that even if it is mandatory that the plaint shall show the ground upon which the exemption of period of limitation from law regarding limitation to file the suit is claimed.

12. However, as argued by the learned counsel for the plaintiff, in the above referred decision relied on by the learned counsel for the defendant, it is clearly stated that if the ground for limitation is not inconsistent with the grounds set out in the plaint, it is not mandatory on the part of the plaintiff to set out such ground of exemption from limitation law in the plaint. As pointed out by the learned counsel for the plaintiff, the proviso to Order VII Rule 6 of CPC reads thus:

“Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.”

As mentioned herein above, the suit on hand is filed during the period of Covid-19 and the particular period is exempted as per the order of the Hon’ble Apex Court in view of Covid-19 pandemic. Therefore, when the ground set out by the plaint is not inconsistent with the said law, it is not necessary to mention in the plaint of the ground of exemption from limitation law.

13. One of the contentions of the learned counsel for the plaintiff against the contention of the defendant put forth in the

application is that the plaintiff approached the DLSA for pre-institution mediation as provided under Section 12A of Commercial Courts Act and the matter was pending before the DLSA for certain period and such period shall stand excluded. In support of this contention the learned counsel for the plaintiff has relied on the judgment of Hon'ble Supreme Court in Civil Appeal No. /2022 arising out of **SLP No.14697/2021 (M/s. Patil Automation Private Limited and ors v/s. Rakheja Engineers Private Limited)**, in which it is held that:

“By the second proviso, the legislature has taken care to provide that the period, during which the parties remained occupied with the pre-litigation mediation, is not to be reckoned for the purpose of computing the period of limitation under the Limitation Act 1963. As to what would happen, if the parties arrive at the settlement, is provided for in Section 12A sub-Section (4).”

The learned counsel for the plaintiff has also relied on one more decision of Hon'ble Apex Court in Sue motu WP No.3/2020, wherein as per order dated 10.07.2020 it is held that:

“In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.”

In the suit on hand, as per the plaint averments, the cause of action for the suit arose on 11.12.2017. Hence, the period of limitation for filing the suit would expire on 11.12.2020, which was within the period, which is exempted for computing period of limitation as per the above referred order of the Hon'ble Apex Court. This suit is filed on 12.03.2021. Therefore, prima facie the suit is filed within the period of limitation in view of above referred order of the Hon'ble Apex Court.

14. As argued by the learned counsel for the defendant, in the case on hand there is absolutely no mention in the plaint that the plaintiff approached the DLSA pre-institution mediation. Further, as pointed out by the learned counsel for the defendant, the materials forthcoming on record would show that the plaintiff filed application under Order XXXVIII Rule 5 of CPC for an emergent relief of attachment before judgment of the property of the defendant. Hence, if the interim relief is claimed at the time of filing of the suit, it is not mandatory on the part of the plaintiff to approach the concerned Authority for pre-institution mediation under Section 12A of the Act. Hence,

the contention of the plaintiff that he approached the concerned authority for pre-institution mediation earlier to filing of the suit and such period when the matter was pending before the concerned Authority for pre-institution mediation shall be excluded.

15. However, as discussed herein above, the suit is filed during the period of Covid-19 pandemic and hence, the period from 15.03.2020 till 28.02.2022 should be excluded for the purpose of limitation to file any suit or proceedings. Any judgment or order of the Hon'ble Apex Court is law of the land. If such law is considered, the present suit is filed within the period of limitation, even though ground under such law for exemption of period of limitation is not pleaded in the plaint.

16. Moreover, as per the proviso to Order VII Rule 6 of CPC, if the ground under which exemption of period of limitation sought for is not inconsistent with the ground set out in the plaint, it is not mandatory on the part of the plaintiff to show such ground upon which the exemption from law of

limitation is claimed. Therefore, the contention of the defendant that from the plaint averments the suit is barred by limitation does not have legs to stand on the facts of the case and also in law. Consequently, the defendant has failed to make out any ground to reject the plaint on the ground that the suit is barred by limitation. Hence, the point No.1 is answered in the negative.

17. **POINT NO.2:** From the discussion made herein above, it would be clear that the application is liable to be dismissed. In the result, I proceed to pass the following:

ORDER

This application IA No.4 filed by the defendant under Order VII Rule 11(d) of Civil Procedure Code is hereby dismissed.

In the circumstances, there shall be no order as to costs.

*(Dictated to the Stenographer transcribed by him, corrected and then pronounced by me in Open Court on this **the 18th day of September 2024**)*

(T. N. Inavally)
Principal District & Sessions Judge,
Belagavi