

**BEFORE THE COMMERCIAL COURT & II ADDL DISTRICT &
SESSIONS JUDGE, MYSURU, AT: MYSURU.**

Present: Sri.Hosamani Pundalik,
Presiding Officer,
Commercial Court & II Addl. District &
Sessions Judge, Mysuru.

Dated this the 23rd day of February 2023

Com.O.S.No.109/2022

Plaintiff :

M/s Chabbras Associates, a registered
partnership firm having its office at
No.11-1/77/14, Chilkalgoda, Secundrabad
-560 061 Telangana State, represented
by its Power of Attorney Holder
Mr.K.Sateesh.

(By Sri A.Sampath, Adv.)

/vs/

Defendant:

The Commissioner, Mysore City
Corporation, Mysuru 570 022.

(By Smt.Geetha Devi M.Papanna. Adv)

ORDER ON I.A.

Applicant / Defendant :

The Commissioner, Mysore City
Corporation, Mysuru 570 022.

Respondent / Plaintiff :

M/s Chabbras Associates, a registered partnership firm having its office at No.11-1/77/14, Chilkalgoda, Secundrabad -560 061 Telangana State, represented by its Power of Attorney Holder Mr.K.Sateesh.

Order on I.A. U/O VII R.11(d)

This is an application filed by the Defendant Mysuru City Corporation under Order VII Rule 11(d) of CPC., for rejection of plaint as suit is barred by limitation and also for non compliance of mandatory provision of the Section 482 of the Municipal Corporation Act in the interest of justice and equity.

2. The case of the Defendant in brief is as under:

It is stated in the affidavit filed along with IA by Sri Lakshmikanth Reddy, Commissioner, Mysore city Corporation, Mysuru that the plaintiff has filed the suit for recovery of an amount of Rs.41,04,84,455/- along with interest at 12% per annum and further stated that there was a delay in handling entire project and suit is barred by limitation and also suit is not maintainable for non compliance of Section 462 of Municipal Corporation Act. Further stated the plaintiff has sent notice on 27.03.2015 to the Defendant claiming compensation. The plaintiff ought to have sought adjudication of the same within 3 years which

has not been done. The present suit is barred by limitation. If the application is not allowed it will cause injustice and irreparable injury to the Corporation, if the application is allowed no prejudice will be caused to the plaintiff. Hence, he prayed to allow the application .

3. Per contra it is contended by the Plaintiff that the application filed by the Defendant is not maintainable wither in law and on facts. Further it is stated that the contract came to be terminated by the plaintiff himself in terms of notice dated 31.08.2020 and copy of the notice dated 31.08.2020 is produced before the Court. The Defendant though engaged the service of the plaintiff did not permit the plaintiff to execute the project and caused various hurdles due to which the plaintiff suffered losses. Hence the plaintiff issued notice dated 31.08.2020 terminating the contract and expressing its unwillingness to execute the project. The cause of action arose on 31.08.2020 and not on 27.03.2015. Further it is stated that the limitation is a mixed question of facts and law and required detailed inquiry. The plaintiff complied the provision under Section 482 of the Municipal Corporation Act by issuing notice dated 31.08.2020 calling upon the Defendant to pay the dues and prayed to reject the application.

4. Thereafter, I have heard arguments advanced by the learned counsel for the Defendant and that of the learned counsel for the Plaintiff.

5. The points that would arise for my consideration in this case are as under:

(1) Whether the application filed by the Defendant under Order VII Rule 11(d) CPC., for rejection of plaint deserves to be allowed ?

(2) What Order?

6. My findings to the above points are as under:

Point No.1 : In the Negative

Point No.2 : As per final order for the following

REASONS

7. **Point No.1** :- It is pertinent to note that the present suit was filed by the Plaintiff against the Defendant Corporation for recovery of an amount of Rs.41,04,84,455/- along with interest at 12% per annum. When matter was posted for further chief of PW1. The Defendant has filed present application under Order 7 rule11(d) CPC for rejection of plaint as suit is barred by limitation and for non compliance of mandatory provision of under Section 482of the Municipal Corporation Act stating that the the plaintiff has

filed the suit for recovery of an amount of Rs.41,04,84,455/- along with interest at 12% per annum and further stated that there was a delay in handling entire project and suit is barred by limitation and also suit is not maintainable for non compliance of Section 462 of Municipal Corporation Act. Further stated the plaintiff has sent notice on 27.03.2015 to the Defendant claiming compensation. The plaintiff ought to have sought adjudication of the same within 3 years which has not been done. The present suit is barred by limitation. If the application is not allowed it will cause injustice and irreparable injury to the Corporation, if the application is allowed no prejudice will be caused to the plaintiff. Hence, he prayed to allow the application .

8. Per contra it is contended by the Plaintiff that the application filed by the Defendant is not maintainable wither in law and on facts. Further it is stated that the contract came to be terminated by the plaintiff himself in terms of notice dated 31.08.2020 and copy of the notice dated 31.08.2020 is produced before the Court. The Defendant though engaged the service of the plaintiff did not permit the plaintiff to execute the project and caused various hurdles due to which the plaintiff suffered losses. Hence the plaintiff issued notice dated 31.08.2020 terminating the contract and expressing its unwillingness to execute the project. The cause of action arose on 31.08.2020 and not on 27.03.2015. Further it is stated that the limitation is a mixed question of

facts and law and required detailed inquiry. The plaintiff complied the provision under Section 482 of the Municipal Corporation Act by issuing notice dated 31.08.2020 calling upon the Defendant to pay the dues and prayed to reject the application.

9. It is pertinent to note that the present application was filed by the Defendant for rejection of plaint as the suit is barred by limitation. In this aspect the Judgments of the Hon'ble Supreme Court of India assumes significant and the same are reproduced as under :

The decision in case of **AIR 2020 SC 2721 – 2020 (6) SCJ 520 in case of Shakti Bhog Food Industries vs. Central Bank of India** – wherein the Hon'ble Supreme Court of India held that the rejection of plaint since factum of suit being barred by limitation would be a mixed question of fact and law. Hence, rejection of plaint U/o VII Rule 11 of CPC improper. Further it was **held** that – the cause of action for filing a suit would consist of bundle of facts, the factum of suit being barred by limitation ordinarily would be a mixed question of facts and law. Even for that reason invoking order VII Rule 11 CPC., is ruled out. Another decision reported in **2021(4) KCCR SN 270(SC)** in the case of **Salim D**

Agboatwala and others Vs Shamalji Oddhavji Thakkar and others – wherein the Hon'ble Supreme Court of India held that - VII Rule 11 CPC., - rejection of plaint barred by limitation – limitation depend upon the evidence of the issuance and service of notice – knowledge of plaintiffs – Defendant cannot pick up few sentence here and there from plaint to seek rejection of plaint. Appeal allowed the judgment of Trial Court and High Court set-aside suit. Suit restored to file. Another decision reported in **(2019)10 SCC 226** in case of **Shankathussain Mohammed Patel Vs. Khatunben Mohammed Bhai Polar** wherein the Hon'ble Supreme Court of India held that unless entire averments of the plaint crucial aspect of the case considered and no plaint should be rejected.

10. It is pertinent to note that, the plaintiff has filed present suit against the Defendant for recovery of money . The record reveals that the Plaintiff has issued notice to the Plaintiff not only on 27.3.2015 but also on 31.8.2020. the Plaintiff complied the ;mandatory provision under Section 482 of the Municipal Corporation Act. Therefore, the question of rejection of plaint for non compliance of mandatory provision under Section 482 of the Municipal Corporation Act does not arise as the Plaintiff has complied the provision

under Section 482 of Municipal Corporation Act by issuing notice as required under law. So far as limitation is concerned the same is mixed question of law as per Judgment of the Hon'ble Supreme Court of India reported in case of **AIR 2020 SC 2721 – 2020 (6) SCJ 520 in case of Shakti Bhog Food Industries vs. Central Bank of India** – wherein the Hon'ble Supreme Court of India held that the rejection of plaint since factum of suit being barred by limitation would be a mixed question of fact and law. Hence, rejection of plaint U/o VII Rule 11 of CPC improper. Therefore, the application filed by the Defendant has no merit and liable to be rejected. In view of the facts and circumstances of the case and materials available on record, I am of the considered opinion that the application filed by the Defendant under Order VII Rule 11(d) CPC., is liable to be rejected. Therefore, I hold that the application filed by the Defendant under Order VII Rule 11 (d) CPC., liable to be rejected. Hence, I answered **Point No.1 in the Negative.**

11. **Point No.2:-** In view of my findings on the above Point No.1, I proceed to pass the following:

ORDER

The application filed by the defendant under Order VII Rule 11(d) of CPC is hereby rejected.

In view of the facts and circumstances
of the case the parties are directed to bear
their own costs.

(Dictated to the Judgment Writer directly on computer, typed by her,
corrected and then pronounced by me in the Open Court, on this the 23rd
day of February 2023)

(Hosamani Pundalik)
Presiding Officer,
Commercial Court & II Addl. District &
Sessions Judge, Mysuru.

(Order pronounced in open Court vide separate order)

ORDER

The application filed by the defendant under Order VII Rule 11(d) of CPC is hereby rejected.

In view of the facts and circumstances of the case the parties are directed to bear their own costs.

Presiding Officer,
Commercial Court & II Addl. District &
Sessions Judge, Mysuru.

