

**Order below Exh. 13 in Spl. C. S. No. 212/2021.**  
**(CNR NO.MHST05-000480-2021)**

Defendant has filed an application for rejection of the plaintiff under Order VII Rule 11(b) and (d) of the C.P.C. According to him, suit of the plaintiff is time barred. Para No. 10 of the plaintiff is illegal one. Plaintiff has filed this suit only because defendant has filed a suit at Patan Court against him. Suit of the plaintiff is barred by limitation. With said submission she prayed for rejection of the plaintiff.

02. Plaintiff has replied his application vide Exh. 15. According to him, there is no force in the submission of the defendant. In fact plaintiff could have filed counter-claim with W.S. in that suit which defendant has filed at Patan Court, however, if he had done so then question of jurisdiction of the Court would have been raised. Hence, he not pressed said application at Patan Court. He further submitted that, question of limitation is mixed question of Law and facts. Therefore, it cannot be decided at this stage. With said submission he prayed for rejection of the application Exh. 13.

03. I have gone through plaint and all the documents filed by both parties. I have also heard the arguments served by both counsels. First of all it is to be mentioned here that in the application itself defendant has disputed para No. 10 of the plaint. Any para in the plaint cannot be decided without inquiry and without giving opportunity of being heard to the party.

04. While arguing the matter Ld. Counsel for the defendant mainly raised that the suit of the plaint is barred by limitation. According to him, transaction between parties has been shown to be taken place in the year 1985. He has attracted my attention towards two documents which are filed by the plaintiff i.e. agreement of understanding and “Kabje-patti” which is executed on same date 17.10.1985. According to him said both documents are executed on 17.10.1985. Meanwhile nothing was happened. Now all of sudden plaintiff has filed present suit. Which found to be out dated at the face of suit itself.

While arguing the matter Ld. Counsel for the defendant, kept his reliance on a judgment between Satish Kumar Vs. Reena Bhoumik, reported in LAWS (DLH) 2012 4

256 of Hon'ble Delhi High Court, it is held by the Hon'ble Delhi High Court that *if the suit is presumed to be a suit for recovery of loan amount then period of limitation will start from the date of advancement of the loan, as per Article 19 for which period of limitation is prescribed as three years when the loan is made.*

05. On the other hand, Ld. Counsel for the plaintiff argued at length and kept his reliance on lot of judgments, preferably *Chhotenben & Anr. Vs. Kiritbhai Thakkar & Anr. reported in 2019 (2) Mh.L.J.*, it is held that “*rejection of plaint under Order VII Rule 11 and Limitation Act ---- only avernments in plaint are germane- plea raised in application that suit is barred by Law of limitation is triable issue and it can be decided only after taking evidence-plaint cannot be rejected at threshold in exercise of powers Order VII Rule 11(d) of the C.P.C.*

He further kept his reliance on judgment *RDB Two Thousand Plus Ltd. Vs. Sarvideo AIR 2000 CALCUTTA 107*, it is held by Hon'ble Calcutta High Court that *question whether documents annexed to the plaint and avernments made to that extent in the plaint, are factually correct or not, is mixed question*

*of Law and fact. Court to decide at the time of hearing- issue cannot be decided at the initial stage of the filling of plaint.*

In reported judgment **Shaktibhog food industries Vs. Central Bank of India reported in Mh.L.J. 2020 (5) (b)**, it is held that *cause of action for filling the suit would consists of bundle of facts – factum of suit being barred by limitation ordinarily would be a mixed question of fact and Law. For that reason invoking Order VII Rule 11 of the C.P.C. is ruled out.*

Ld. Counsel for the plaintiff submitted other so many reported judgments but gist of all judgments is same that limitation is being mixed question of Law and facts, it is to be decided after inquiry.

06. In present suit Ld. Counsel for the defendant has submitted that, suit is for recovery of loan therefore, plaintiff ought to have brought it within three years from the date of advancement of loan. I have gone through the documents which is submitted by the plaintiff i.e. “Kabje-patti” and agreement of understanding. Prima-facie it appears that, suit is for recovery of loan however, on perusal of aforesaid documents it became clear

that father of defendant had kept his field with the plaintiff Prakash and executed document "*Kabje-Patti*" with contention that he was in due of Rs. 7,65,700/- therefore, he handed over the possession of his land to the plaintiff and mentioned that when he (father of defendant) would be able to pay the amount Rs. 7,65,700/- and interest thereon @ 7 % p.a. then said field will be released in his favour. Then he died. Possession of the field remained with the plaintiff. Now plaintiff is going to claim the due amount and interest thereon till today.

07. Thus, it appears that suit of the plaintiff is not simplicitor recovery of loan amount. Even it is to be decided whether said transaction comes under the term of giving of loan or not. Moreover, while arguing the matter ld. Counsel for the defendant has challenged the genuineness of aforesaid both documents on which plaintiff is relying i.e. "*Kabje-Patti*" and agreement of understanding. Genuineness of the document cannot be decided at this stage.

08. Ld. Counsel for the plaintiff submitted while arguing the matter that cause of action for the suit will be counted from

the date of issuance of notice which is shown to be issued in the year 2018. On contrary Ld. Counsel for the defendant raised objection for said notice too. According to him, there is nowhere mentioned about loan and “*Kabje-Patti*” etc. in said notice. Therefore, it cannot be taken into consideration.

09. It is to be mentioned here that, Ld. Counsel for the defendant not only challenging limitation but also challenging the documents on which plaintiff has kept his reliance for bringing the suit. Execution of documents and contents thereon cannot be decided at this stage. Inquiry for the same is required to be made.

10. Moreover, point of limitation is being mixed question of Law and facts for deciding the same inquiry is required. Therefore, ratio of reported judgment submitted by the Ld. Counsel for the plaintiff is applicable here. On contrary, ratio of reported judgment on his Ld. Counsel for the defendant has not applicable here because Ld. Counsel for the defendant has not only challenged the date of institution of suit but execution of document and contents of notice. Considering all these things, I

come to the conclusion that application for rejection of the plaint deserves to be rejected. Hence, I proceed to pass the following order.

**ORDER**

Application stands rejected.

Place: Karad.  
Date: 20.12.2021.

(Jayshree Punawala)  
3<sup>rd</sup> Jt. Civil Judge, S. D. Karad.