

Subhash -Vs- Chandrakant.
RCS. 01/2023.

ORDER BELOW EXH.11
(Passed on 19.10.2023)

That the instant application filed under Order VII, Rule 11 (a), (b), and (d) of The Code of Civil Procedure for rejection of the plaint on the ground that the suit filed without cause of action, barred by law of limitation and undervalued.

2. According to defendants, the suit of the plaintiff is evasive, false and bogus. Plaintiff did not come in the court with clean hands. The plaintiff has not paid proper court fee on market value of the suit property. The plaintiff claimed for the declaration of the alleged sale deed null and void. According to the defendant, as per the provision of Article 59 of the law of limitation, suit shall have filed within three years from the date of execution of sale deed. He further submitted that the alleged sale deed which is under challenge executed by the plaintiff himself. Hence, he has full knowledge of the alleged sale deed. However, knowingly the instant suit filed after the laps of statutory period. Defendant further submitted that the suit is not tenable and maintainable in the eye of law. There is no reasonable cause of action arises to institute the suit against defendants. Therefore, as per Order VII Rule 11 of The Code of Civil Procedure suit liable to be rejected. In this context defendant prayed to reject the plaint.

3. Doyen Advocate for plaintiff Smt. Dhotkar filed her say vide Exh.18. She submitted that there is no substance in the applications

made by defendants. The cause of action is specifically mentioned in the plaint. The application is nothing but to prolong the case. Plaintiff further submitted that he paid proper court fee. The suit is well within limitation. It is the case of plaintiff that he has not sold suit property to the defendant, it was the money laundering transaction. He has given his signature on the blank stamp paper. The defendant has taken disadvantages of the same and got executed illegal document of the sale deed. He has not accepted the consideration amount as stated in the alleged sale deed. Hence, he further submitted that the law of limitation is the mixed question of law and fact and it is the question of trial. Therefore, he prayed to reject the application. Lastly, he submitted that the application filed by defendant is baseless and concocted. It is filed with intent only to harass the plaintiff. Hence, he prayed to reject the application.

4. Perused application and say, Heard Ld. Advocates for both parties. They argued according to their respective pleadings.

5. The following points are taken for discussion to determine the application. I have recorded the findings thereon along with reasons as under.

Sr. No.	Points	Finding
1.	Whether the plaint apparently appears to be hit by provisions of Order VII, Rule 11 of The Code of Civil Procedure, 1908 and law of limitation?	No.
2.	What Order?	Application Rejected

REASONS

6. Before touching to the merits of the case, I would like to reproduce **Order VII Rule 11 of Code of Civil Procedure.**

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

- (a) Where it does not disclose a cause of action;*
- (b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) Where the suit appears from the statement in the plaint to be barred by any law;*
- (e) Where it is not filed in duplicate;*
- (f) Where the plaintiff fails to comply sub-rule (2) of rule 9:*
- (g) Where the plaintiff fails to comply sub-rule (3) of rule 9.]*

7. **As to points no. 1 and 2 :-** It is settled position of law of land that, while deciding question under Order 7, Rule 11, averments made in the plaint are alone germane. Means, Court is required to decide question on the basis of pleadings made in the plaint only. It is not required to be considered the averments mentioned in the application

under order VII rule 11 and allegations pleaded in the written statement of defendants.

8. On perusal of the plaint, it is seen that the plaintiff specifically mentioned in plaint para no. 09 that the cause of action to the instant suit arose on various dates and lastly, on 10.08.2022. According to the plaintiff the cause of action to file instant suit is continuous.

9. Considering the aspect, it is relevant to go through contents of the plaint. On perusal of the entire plaint, it is seen that plaintiffs specifically mentioned in para no. 09 that the cause of action to the instant suit arose on different dates and lastly, on 10.08.2022. According to the plaintiff the cause of action to file instant suit is continuous. In **Shakti Bhog Food Industries Ltd Vs. Central Bank of India and another 2020 SCC Online SC 482** the Hon'ble Supreme Court of India in paragraphs 21 and 28 held as under. *"It is well established position that the cause of action for filing a suit would consist of bundle of facts. and few lines or passage from the plaint should not be read in isolation and the pleadings ought to be read as a whole to ascertain its true import."*

10. Considering the pleading of the plaint, it is clearly shows that the plaintiff specifically discloses the proper cause of action to the suit. It is the settled principle of law that the cause of action is nothing but the bundle of facts. On perusal of the plaint, it reveals that the cause of action arises to institute the suit. Hence, I do not find any substance in the averments raised by the defendant that suit is not tenable without cause of action.

11. It is the submission of defendant that the plaintiff claimed declaration and possession of the suit property. The suit property valued of Rs. 3,69,000/- He has to pay proper court fee over the market value of the suit property. plaintiff has not paid requisite court fee on the market value of the suit property. The suit of the plaintiff is undervalued and it is liable to be rejected under order 7 rule 11 (b) on the sole ground. On perusal of the contents of plaint it reveals that the instant suit is filed for declaration, perpetual injunction. That the alleged sale deed seen to be executed by the plaintiff in favour of defendant. The plaintiff himself is the executant of the alleged sale deed. Thus, he has to come before the court with prayer to canceled the same, but he has only prayed for declaration that the said document is illegal, null and void ab-intio. It is binding on the plaintiff to pay proper court fee on the market value of the suit property. However, on perusal of record it appears that the plaintiff has not paid proper court fee.

12. No doubt, deficit court fee is not a sole ground to reject the plaint. As per the Order VII rule 11(b), court has to grant time to correct the value of the suit and direct to pay requisite court fee. If the party failed to comply the order within a time to be fixed by the Court, then only plaint might be rejected. Considering the legal aspect of the case the plaintiff seen to be paid deficit court fee. Hence, it would be just and proper to be given a chance to the plaintiff to pay the proper court fee on the market value of the suit mentioned in alleged sale deed. With this backdrop of the above said discussion, I do not find any substance in the argument advanced by the counsel of defendants. It is the settled principle of law that the Court cannot directly reject the plaint only on

the point of deficit court fee. It can be taken into consideration only when the plaintiff failed to pay deficit court fee even after directed by the court. It is needless to say that Court can direct the plaintiff at any stage to annex the necessary court fee if it found that the plaintiff paid deficit court fee. In view of the above findings the plaint of the plaintiff is not liable to be rejected.

13. It is the submission of defendants that the suit is barred by law of limitation and the plaintiff has no locus-standi to institute the instant suit. He relied on the provision of Article 59 of the limitation Act. On perusal of the plaint, it reveals that the plaintiff pleaded that the alleged sale deed is nothing but executed out of money laundering transaction. He further deposed that the defendant has not paid consideration amount as stated in the alleged sale deed. The defendant plying fraud, mischief and executed the alleged sale deed without taking free consent of the plaintiff. Therefore, plaintiff prayed for declaration of the alleged sale deed is null and void. As per article 59 of limitation Act, the plaintiff needs to come before court within 3 years from the date of knowledge of the alleged document which he wants to annulled or declared to be null and void. On perusal of entire pleading, it appears that the all these facts need to prove on merit of the case by full trial. Moreover, the point of limitation is the mixed question of law and facts. Without going through the entire evidences of both sides, no one can come directly to the conclusion that the suit is barred by law of limitation. It could not decide on the face of the suit without going to the merit of the case by adducing evidences of both sides whether the suit is within limitation.

14. In view of the findings recorded in para 6 to 12, I conclude that at this stage there is no sufficient material on record to reject the plaint. It would be just and proper to grant proper opportunities to both parties to prove their case on its own merit. Thus, the instant application for rejection of the plaint found meritless. Accordingly, I answered point no. 1 in negative. In order to finding of the point no. 2, I passed following order.

ORDER

1. The application Exh. 11 hereby rejected.
2. Plaintiff is directed to pay the deficit court fee on the market value of the suit property mentioned in the alleged sale deed which is under challenged, within 14 days from the date of order.
3. Both Parties bears their own costs.
3. Parties are directed to proceed with the case expeditiously.

Dt: 19.10.2023

(S. W. Shegokar.)
Jt. Civil Judge (Jr.Dn.), Seloo.