



Suit instituted on:19/08/2017

Suit registered on:19/08/2017

Suit decided on:29/12/2018

Duration:10/04/0001

D/M/Years

IN THE COURT OF 6th ADDL. SENIOR CIVIL JUDGE, VADODARA

Special Summary Suit No. : 24/2018

ORDER BELOW EXH. 28

Plaintiffs : M/s. Bholasing Firm

Proprietor : Parsuram Vishwanathsinh Rajput
29/B, Shri Hari Tenaments
Ganganagar Society,
Panchvati, Gorva
Vadodara

V/s.

Defendants : Thakkar and Sons : 3 another

Chasis Devision Pvt. Ltd.
Manekpark, Nr. VIP Circule
VIP Road
Vadodara

Suit : Under Order 37 Rule 3 of C P Code

Mr. D. M. Mistri : Learned advocate for the plaintiff

Mr. J. B. Varma : Learned advocate for the defendants

: JUDGMENT ON PRELIMINARY ISSUES :

(Under O.7,R.11(d) of C.P.Code)

(1) By this Order and judgment I propose to adjudicate an application filed by the defendants vide Exh. : 28 under Order 7 Rule 11(d) read with section 151 of CPC.

Claim of plaintiff is that he have instituted the suit seeking the decree for recovery of Rs. 26,89,90,750/- under order 37 Rule 3 of the C.P. Code

(2) The broad facts which have been pleaded in the plaint or can be otherwise culled out from the documents and record of the Case are that the plaintiff is project contractor and is doing job work for different companies in Gujarat by accepting job work. The plaintiff had work with defendant No. 1 in the year 2005 to 2015 but the general manager of said company has played fraud with plaintiff as after accepting the works for fabrication, erection, mechanical work, shifting of machineries, pipeline and infrastructure work but the copy of bills and tools has been in the possession of defendants. It is further submitted that plaintiff have done all the labour works as ordered during the year 2005 to 2015 but defendants have not issued work order. It is the say of plaintiff that during the year 2005 to 2015 total Rs. 4,50,000/- has been due from the defendant with interest amount. The machineries which was purchased by plaintiff is also laying at the premises of defendant company therefore at monthly rent Rs. 50,000/- thereof the period of 2005 to 2015 the rent amount is Rs. 60,00,000/- also due from defendant company and in addition of 18% interest p.a the amount would be 2,85,40,450 is also recoverable. Plaintiff has calculated damage amount of Rs. 20,00,000/- and hence alleged total outstanding amount is Rs. 26,89,90,750/- is due from the defendants. It is further also stated that all the bills, gate passes, tools, map of project passed by defendants are also

with the possession of defendant company and plaintiff has also lodged a criminal complaint against the defendant as they have threatened to kill him. Hence suit has been instituted accordingly.

(3) The application under O.7 R.11 of C.P.Code is filed by defendants based on that the plaint is not maintainable and barred by Law of limitation. It is stated that a perusal of plaint and document attached along with it clearly shows that the alleged cause of action for filing the present suit arose in the year 2005 and it is submitted that the limitation period for filing summary suit under order 37 of C.P. Code is 3 years as provided by the Limitation Act and the present suit should have been filed before the year 2008 hence it is prayed the present suit is required to be rejected under Order 7, Rule 11 of the C.P. Code.

(4) both the learned advocates of the parties have advanced their arguments.

looking to the facts of the case and application filed by defendant, it is pertinent to note that application filed by defendants is purely based on law point which could be decide on preliminary issues. Learned advocate of defendant have also argued on such preliminary issues, and as per my opinion such preliminary issues shall be following.

Issues:-

- (1) whether the plaint is barred by the provision of Order 7,Rule 11(d) of C.P.Code and is liable to be rejected ?
- (2) What order ?

Findings:-

- 1) In the affirmative.
- 2) As per final order.

:Reasons:

(5) Before proceeds further with the matter it may be expedient to deal with the nature and scope of an application under Order VII Rule 11 for the rejection of a plaint. For deciding an application under Order VII Rule 11 CPC on the ground that the suit is barred by any law, the court has to only see the averments in the plaint and the accompanying documents relied upon by the plaintiff. The court is not supposed to look at the defence set up by the defendant in his written statement.

At this stage the Court is only required to satisfy that if the allegations made in the plaint are accepted as true, the plaintiff would be entitled to the relief as claimed. The Court is not required to evaluate the merit in the claims or adjudicate upon the truth or the falsity of the averments made. If a question of fact or a mixed question of law and fact is raised, the plaint cannot be rejected under Order 7 Rule 11 of CPC.

(6) Plaintiff has produced various documents in support of his plaint along with copy of pauper application filed by plaintiff, but he has not care to produce the documents which he suppose to rely upon in support his claim, he has produced all the documents along with pauper application and have not submitted his list of documents in support of plaint, even though if we look in to what documents produced along with pauper application, he has produced letter dated 18/07/2014 does not stating correctly who has been it addressed. The various copies of bills are also produced by plaintiff are stating the date of year 2005 so prima facie no documents has been produced by the plaintiff to state that suit is instituted within the time limit. It is pertinent to note here that plaintiff has instituted this suit for recovery of due amount but he has not produced any books of account or any demand notice thereof. Moreover plaintiff has submitted in his plaint that he has done work for defendants as fabrication, erection, mechanical work,

shifting of machineries, pipeline and infrastructure work but not a any piece of paper has produce in support of that facts. He stated that the machineries which was purchased by plaintiff is also laying at the premises of defendant company but have also not produce any evidence regarding that facts also. So not only the plaint is barred by Law of limitation but it seems that Cause of Action also not arose. It is also pertinent to note that the suit of plaintiff is summary suit and he ought to have supporting documents along with the suit and after the filing of an application under s. O.7. R.11 by defendant, has not produced any documents to purports that suit is in time limit.

Plaintiff has also stated in para 7 of the plaint that why the plaint has been instituted with giving title "Reasons" that the cause of action was arose as he started works by giving quotation, he started labour works in the year of 2005 to 2015 according to contract but no copy of alleged contract, no books of account, no demand notice given if original bills laying with defendant before filing of the suit or according to procedure provided in C.P. Code, hence it seems no cause of action arose to institute the suit.

(7) In the aforesaid circumstances and discussion made and on going through the plaint and after giving my thoughtful consideration to the plain reading of plaint and materials along with it, transpires that, it is sum and substances of the defendants that suit instituted is clearly barred by Law of Limitation and no cause of action arisen accordingly and looking to such facts of the case the question regarding barred by Law would need not deciding by recording the evidence, it could be say looking to the facts question related is not mix question of law and facts but clear contemplates that the plaint is barred by Law. The suit instituted after 1 decade i.e. after 12 years since alleged work order given or work done according to alleged contract is clearly time barred and also instituted without cause hence on forgoing discussion, issue No. 1 is against plaintiff, therefore for issue No. 2, I pass the following final Order.

:ORDER:

-The plaint of plaintiff is hereby rejected under O.7, R.11(a) and (d) of C.P. Code.

-Plaintiff shall bear all the costs of suit.

-As suit of plaintiff fails, he is ordered that requisite Court Fee stamp shall pay within 10 days from declaration of this order under Order 33, Rule 11 of the C.P.Code.

-If plaintiff fails to pay requisite Court fees in stipulated time, Yadi to be sent to the Collector, Vadodara for the recovery purpose accordingly.

-Decree shall be drawn up accordingly.

-Office is here by directed that as suit is adjudicated on deciding preliminary issues so necessary remarks shall be made in relevant returns.

Pronounce in open court on today 29th day of December, 2018

29/12/2018

SANJAY BABULAL SHAH

GJ00755

6th Addl. Sr.Civil Judge,

Vadodara