

Present: Sri Srikumar Goswami (JO Code:WB00714)

Judge, Commercial Court at Alipore

Money Suit 48 of 2019

CNR No. WBSP18-000176-2019

Order No. 36

Date: 13.04.2022

In the matter of:

Suit for damage and recovery of
money valued at Rs. 3,56,77,274/-

AND

In the matter of:

M/S DARCL LOGISTICS LTD.

Vs.

In the matter of:

**M/S TATA GLOBAL BEVERAGES
LTD.**

Appearance for the Plaintiff:

Mr. Suman Ganguly....Ld. Counsel

Mr. Jhilam Adhikari...Ld. Counsel

Appearance for the Defendant:

Mr. Dipnath Roy Chowdhury....Ld. Counsel

Mr. Anju Chakraborty....Ld. Counsel

Mr. Ramanuj Roy Chowdhury....Ld. Counsel

Order

Today is fixed for passing the order in respect of an Interlocutory Application being no. 87 of 2020 corresponds to an application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) for rejection of the plaint relating to this instant suit registered as Money Suit 48 of 2019.

Ld. Counsel on behalf of both sides file their respective haziras.

I.A. No. 87/2020

The Court: The underpinned Order will dispose of the apropos interlocutory application numbered as afore-cited.

1. I have heard both sides on length and considered and perused the present application along with written objection.
2. *Prima facie*, it appears that Defendant of the present interlocutory application being no. 48 of 2019, (indeed Plaintiff herein in the *per se* Money Suit registered as 07 of 2021) files this present Money Suit on 28.09.2016 before the Civil Judge (Sr. Division) 4th Court, Alipore, South 24 Parganas wherein it

is registered as Money Suit 1420 of 2016. In that Ld. Court, copious legal proceedings were held and in the meantime this Commercial Court has been established and Ld. Judge of that Court was pleased to transmit the Money Suit to this Court and herein it is registered as Money Suit 48 of 2019, vide the Order dated 19-12-2019.

3. On the eve of transition of the suit before the aforesaid Court, the Petitioner, M/S TATA GLOBAL BEVERAGES LTD. (indeed the Defendant of the intrinsic money suit) craves to satisfy that Court as well as to this Court to allow the present application.
4. This present application is, *inter alia*, a progeny of the *per se* Money Suit being no. 48 of 2019 and Plaintiff, M/S DARCL LOGISTICS LTD. (indeed the Defendant in the present interlocutory application) propels this suit to recover money quantified at Rs. 3,56,77,274/- from the Defendant/Petitioner. *Albeit*, the Defendant/Petitioner files this interlocutory application under Order VII Rule 11 of CPC therefore, progression of the intrinsic suit is barred herewith and the present interlocutory application filed by the Defendant/Petitioner is to be entertained expeditiously by way of disposal for adjudication of the incipient Suit for the ends of justice.
5. For impinging into the present application cognizance of intrinsic suit is essential to delineate in a brief:

a) The Plaintiff/Defendant vide a letter dated 10.12.2012 was approached by the Defendant to provide best quotes on a per kg basis for a pay load of 9MT/16MT and asked to place the same in a sealed envelope. Thereafter, a carriage agreement dated 1st January, 2013 for the period of 01.01.2013 to 30.06.2013 was executed between the Plaintiff/Defendant and Defendant/Petitioner wherein the Plaintiff/Defendant was entrusted with the transportation and carriages of goods of the Defendant/Petitioner to the destination of the consignee. Some stringent conditions are incorporated in that carriage agreement. In due course of time the Plaintiff/Defendant entered into different agreements dated 01.01.2013, 01.01.2013 and 15.01.2013 with some persons for collection of raw Teas from the seller's warehouse and deliver the same to the Plaintiff/Defendant as per placement of trucks for onwards dispatch as advised by the Defendant/Petitioner Company. It is exposted in the plaint that the all assignments were delivered in intact condition and were received in


JUDGE
COMMERCIAL COURT AT ALIPORE

Order by the Defendant. No adverse comments were even given on the consignment notes by the Defendant while receiving these materials.

- b)* The Plaintiff after transportation of goods of the Defendant/Petitioner to the assigned destination the Plaintiff/Defendant raised bills for such service to the tune of Rs. 3,56,77,274/- and it is said that the goods office of the Defendant/Petitioner duly received and acknowledged the bills raised by the Plaintiff to its satisfaction and the Defendant/Petitioner delayed to release the said bills.
- c)* Instead of releasing bills the Defendant/Petitioner by a letter dated 01.07.2013 communicated with the Plaintiff/Defendant that a portion of the consignment amounting to 4,96,961.06 kgs of tea has been stolen while in transit under the custody of the Plaintiff and claimed a compensation of Rs. 70,643,713/-. The Plaintiff/Defendant claimed in its plaint that all such allegations made by the Defendant/Petitioner are vexatious. The Defendant/Petitioner also lodged a police complaint as regards of that incident.
- d)* Thereafter, by a letter dated 07.10.2013 the Defendant/Petitioner acknowledged the fact that there was balance of Rs. 2,95,49,892/- only as on 30th September, 2013 payable to the Plaintiff as per the books of the Defendant/Petitioner. Then various meetings between the parties to this present proceeding were held and as regards various e-mails were exchanged between them. As regards lastly on 29.07.2015 a written communication was sent by the Chief Financial Officer of the Plaintiff to the Vice President of the Defendant/Petitioner whereby request for payment of outstanding was made against Bank Guarantee of equivalent amount. But the Plaintiff/Defendant was refused by the Defendant/Petitioner to release the outstanding dues.
- e)* Therefore, after finding no other alternative the Plaintiff/Defendant filed this present suit.

6. On bare Contemplation of the present Interlocutory Application filed by the Defendant/Petitioner, M/S TATA GLOBAL BEVERAGES LTD., this Court is in deliberated position to pen that *nitty-gritty* of adjudicatory supplication of the present Order VII Rule 11 application is:

- i. The Plaintiff's claim as expounded in the averments of the plaint is without credible particulars and as such no specific transaction has been placed there. Therefore, no cause of action is disclosed in the Plaint.
- ii. The Ld. Counsel appearing on behalf of the Defendant/Petitioner strenuously argued at the time of abiding his oral submission that the Plaintiff's suit is barred by limitation *in limine*. The crux of argument as advanced by Ld. Counsel on behalf of the Defendant/Petitioner is that the bills raised by the Plaintiff/Defendant before the Defendant/Petitioner before March 22, 2013 and the Plaintiff/Defendant filed the suit on 28th September, 2016 that is beyond the period of 3 years. As regards Plaintiff/Defendant refers the proviso of Article 18 of The Limitation Act, 1963 (hereinafter referred to as Act), it would be sufficed to refer hereinunder:

- (1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

From the above averments of the said Article of the Act Ld. Counsel of Defendant/Petitioner clearly averred that the time from which period begins to run to be deemed as limitation period is three years and starting of count of that period is from the date when the work is done i.e. more or less March 22, 2013 and not the period that is mentioned by the Plaintiff/Defendant. Ld. Counsel on behalf of the refers the Judgment of Hon'ble Supreme Court of India in the case of N. V. Srinivasa Murthy and Others vs. Mariyamma (Dead) Proposed Lrs. And Others reported in (2005) 5 SCC 548 and, the Judgment of the High Court at Calcutta in the case of State Bank of India Staff Association vs. Popal & Kotech Property reported in 2000 SCC Online Cal 132 and, in the Judgment of High Court at Calcutta in the case of Md. Akhtar Hossain vs. Suresh Singh and Others reported in 2003 SCC Online Cal 41. This Court has contemplatively gone through the averments of all afore-cited Judgments.

7. The actual line of defence of Ld. Counsel on behalf of Plaintiff/Defendant as canvassed by him is based on that:

This is not a suit for specific performance of any agreement as misconceived by the Defendant/Petitioner. This is a suit for accounts and recovery of claim. From the averments made in the plaint filed by the Plaintiff/Defendant it is clear that Defendant/Petitioner refused to clear the dues of the Plaintiff/Defendant finally on 29.07.2015 after a series of communication took place between them. Therefore, Ld. Counsel of Defendant/Petitioner alleged that only on 29.07.2015 that the Defendant/Petitioner finally refused to clear the dues and thereafter, the present suit has been filed. As regards Plaintiff/Defendant takes resort of averments expounded in the Article 113 of the Act. The concerning line of that Article is apposite to said as “three years from when the right to sue accrues”. The Plaintiff/Defendant in respect of that produced a decision of the Hon’ble Supreme Court in Shakti Bhog Food industries Ltd. Vs. the Central Bank of India and Anr. arising out of a Civil Appeal 2514 of 2020 and, in Salim D. Agboatwala and Ors. Vs. Shamalhi Oddhavji Thakkar and Ors. arising out of a Civil Appeal No. 5641 of 2021 and, P.V. Guru Raj Reddy vs. P. Neeradha Reddy and Ors. reported in 2015 SCC (8) SCC 33. This Court has perused all the aforesaid Judgments.

Decision with Reasons

1. The Court in its *prima facie* narration of this present Order has already elucidated the crystal clear arguments as advanced by Ld. Counsel of both sides in respect of present Order VII Rule 11 application and exhumed two pertinent questions which are seemed to be the main adjudicatory point to dispose of this present application.
 - a) Whether the alleged claim or cause of action as expounded in the present suit is barred by law of limitation or not?
 - b) Whether the cause of action to shape the present suit is explicit in the eye of law or not?
2. Now, to conclude this Order it is to be said that when a Plaintiff files a suit by producing a plaint before any appropriate Court of law, the concerned Court takes this plaint granted as sacrosanct to elongate the suit upto the final stage of adjudication. But, it is not meant that averment as expounded in any plaint is always be sacrosanct to initiate a suit and the Court is not blind fold to

acknowledge the plaint without any documents in support of averment as expounded in the plaint. Therefore, the plaint must be treated as *pre eminence* when supporting documents are annexed herewith.

In this Present case the law of limitation becomes the moot point to sustain the present suit in this present scenario. The Defendant/Petitioner in its Order VII Rule 11 application assails that the suit is barred by law of limitation as per proviso of Article 18 of the Limitation Act and as per that proviso of Article 18 of the Act the plaint is barred as threshold of dateline of agreement is March 22, 2013 but the suit is filed on 28th September, 2016, i.e. after three years. But, the Plaintiff/Defendant of that particular suit raises its point in support of its defence in respect of Order VII Rule 11 application that the last date for taking resort to file the instant suit is 29.07.2015 and the suit is filed on 28th September, 2016, therefore, its right is not waived as per the proviso of Article 113 of the Limitation Act.

3. In this instant case this Court does not find any conspicuous documents for taking resort to reach a conclusive point whether the suit is barred by law of limitation or not. But, *ex facie* after bare reading of the plaint and contemplation of arguments of both sides, it is clear that some facts are engrossed here to be adjudicated if the averments of plaint are true. Therefore, it is essential to take resort to some explicit documents by which the averments of plaint may be true.
4. So, from the above discussion this Court is in a considered view that this is very nascent stage to allow this present interlocutory application filed by the Defendant/Petitioner. Rather it will be suffice to ask for adequate documents from the parties to this present proceeding in support of questionnaires as said in the above-written decision portion of averment of this Order.
5. For convenient it is to be reiterated that this Court by itself *suo motu* frames two pertinent questions in the form of issue to dispose this present Order VII Rule 11 application, which will be apposite to cite again hereunder:
 - a) Whether the alleged claim or cause of action as expounded in the present suit is barred by law of limitation or not?
 - b) Whether the cause of action to shape the present suit is explicit in the eye of law or not?
6. Therefore, from that above discussion both the parties to this present proceeding to clarify the moot issue related to the point of limitation are hereby directed to furnish and/or produce and/or submit all relevant

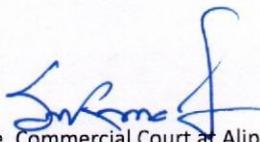
documents (correspondences, emails etc. and any other documents which are to be considered reliable as regards) before this Court on the next date as fixed hereunder after exchanging both sides by next date and after producing the documents this Court will further proceed to adjudge the veracity of the present Order VII Rule 11 application filed by the Defendant/Petitioner.

If the parties to this proceeding unable to not file and/or produce any documents then they have to inform their inability to this Court by filing affidavit on the date as fixed below.

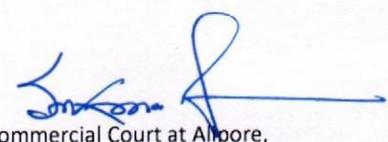
Fixed the matter on 20th April, 2022 at 1:30 P.M. for producing relevant documents by both sides in pursuance of the directive given in this Order.

Both parties shall have to act forthwith on the basis of the downloaded copy of the order sheet from the website/E-court App.

Dictated and corrected by me,


Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

JUDGE
COMMERCIAL COURT AT ALIPORE


Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

JUDGE
COMMERCIAL COURT AT ALIPORE