



\$~24 (Appellate Side)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 170/2019

S K GOEL

..... Appellant

Through: Mr. K.C. Mittal, Mr. Yugansh Mittal, Mr. Keshav Pratap Singh Shekhawat & Mr. Sachin Kaushik, Advs.

versus

DVB EMPLOYEES TERMINAL FUND TRUST (DELETED)
& ANR

..... Respondents

Through: Mr. Manish Srivastava, Mr. Akhil Hasija & Mr. Sagar Arora, Advs. for R2 (NDPL)

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **15.03.2022**

RSA 170/2019

1. This matter was listed today for the Court to consider whether substantive questions of law arise in the present case.
2. The learned Trial Court dismissed the appellant's suit both on limitation as well as on merits.
3. In doing so, the Courts below have not taken into consideration an office order dated 21st December, 1999, exhibited as Exhibit PW1/10, as it was not filed by an application under Order VII, Rule 14 of the CPC, 1908, to take it on record.
4. Mr. Mittal, learned Counsel for the appellant submits, *qua*



limitation, that no issue of limitation was ever framed by the learned trial Court and that the omnibus issues framed could not automatically be treated as including an issue of limitation. Though Mr. Srivastava, learned Counsel for the respondent, has placed reliance on Section 3 of the Limitation Act, 1963, Mr. Mittal points out that the said provision only empowers a Court to pass orders on limitation even if it is not set up as a defence and not to dismiss a case on limitation without framing an issue to that effect.

5. On merits, Mr. Mittal submits that the Courts below were in error in refusing to consider the office order dated 21st December, 1999, despite the order having been issued by the respondent, on the technicality that an application under Order VII, Rule 14 of the CPC, 1908, had not been filed.

6. Additionally, he submits that the judgment of the Supreme Court in **A.K. Bindal vs. U.O.I¹**, which has also been taken into account by the Court below, does not apply to the facts in this case.

7. In my view, the following substantial questions of law do arise for consideration:

(i) Whether the learned trial Court was entitled to dismiss the plaintiff's suit on limitation without framing a specific issue in that regard?

¹ (2003) 5 SCC 163.



(ii) Whether the Courts below were justified in refusing to take into consideration the office order dated 21st December, 1999, though it was exhibited as Exhibit PW-1/10?

(iii) Whether, on merits, the prayers of the plaintiff in the suit were correctly rejected by the Courts below?

8. List for disposal on 2nd May, 2022.

9. As this is a second appeal, formal exchange of pleadings is not required.

10. Learned Counsel for both sides may however place on record short notes of their respective submissions, not exceeding four pages, after exchanging copies with each other, at least 48 hours in advance of the next date of hearing.

11. Learned Counsel may also file compilations of any judicial authorities, if they so desire, after exchanging copies with each other, along with the submissions. The judgments should not be marked or highlighted, however, reference to relevant paragraphs may be indicated in the index accompanying the compilations.

12. The Court Master is directed to e-mail to learned Counsel for both sides, an electronic copy of the LCR.

C.HARI SHANKAR, J

MARCH 15, 2022/SS