

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 19225 of 2023**

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M/S JIVANLAL JOITARAM PATEL & ORS.

Versus

VIJAYSHREE ELECTROMECH PVT LTD

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Appearance:

MR.ANSHIN DESAI, SENIOR COUNSEL FOR MR. JAY M
THAKKAR(6677) for the Petitioner(s) No. 1,2,3,4
MANAN K PANERI(7959) for the Respondent(s) No. 1

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**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR.JUSTICE D.N.RAY**

Date : 17/08/2026

ORAL ORDER
(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)

1. Heard Mr.Anshin Desai, the learned Senior Counsel appearing for the petitioner and perused the record.
2. Pertinent is to note that the present petition invoking our extraordinary jurisdiction under Article 227 of the Constitution of India has been filed to challenge the judgment and order dated 02.09.2023 passed by the Commercial Court below Exhibit '13', rejecting application under Order VII Rule 11 CPC filed by the petitioner herein / original defendant.
3. The sole ground taken by the petitioner herein to press the application under Order VII Rule 11 CPC, as noted in the judgment impugned, was that as per own case of the plaintiff,

the settlement agreement was executed on 01.12.2018, whereas the suit was filed on 24.03.2023, and hence, from the date of execution of the agreement, the suit is *ex facie* barred by limitation. On the said ground only, the prayer was to reject the plaint, which has been dealt with by the Trial Court in the judgment impugned.

4. In the present petition, various grounds have been agitated to assail the order impugned and during the course of argument, it was sought to be submitted that the Commercial Court has committed an error in not considering the provisions of Section 18 of the Limitation Act regarding acknowledgment of disputed amount. By reading the plaint, it was sought to be submitted that as per own case of the plaintiff, the claimed amount became due in the year 2012.

5. The statements in paragraphs '4' and '8' of the plaint are read over to submit by the learned Senior Counsel that the statement with regard to cause of action made in paragraph '8' of the plaint is a result of clever drafting. Infact, the suit is hopelessly time barred and the said fact is evident from the assertion made in paragraph '4' of the plaint itself.

6. The submission is that the entire plaint has to be read along with the documents filed by the plaintiff with the list of documents to ascertain at the stage of Order VII Rule 11 CPC itself as to whether the statement with regard to cause of action is a result of clever drafting or it was a true statement about the cause of action accrued to the plaintiff.

7. The submission is that the cause of action being a bundle of facts, the statement made in paragraph '4' of the plaint could not have been ignored by the Trial Court.

8. Reliance is placed on the decisions of the ***Delhi Development Authority V. Tejpal and Ors. [(2024) 7 SCC 433]*** to substantiate that the issue with regard to the suit being *ex facie* barred by limitation from the reading of the plaint can be decided by the Trial Court at the stage of Order VII Rule 11 itself, as held by the Apex Court.

9. All these submissions deserve to be rejected outrightly for the simple reason that none of them found base in the order impugned. Only argument, as noted hereinbefore, raised by learned Counsel for the defendant before the Trial Court while pressing application under Order VII Rule 11 CPC, was that the suit being filed on 24.03.2023 and as per the contention of the plaintiff, cause of action arose on 01.12.2018, it was beyond the period of three years and is liable to be rejected outrightly.

10. None of the arguments raised by the learned Senior Counsel herein, as noted hereinabove, have been pressed into service before the Trial Court. For this reason, we are afraid to appreciate the arguments made by learned Senior Counsel for assailing the order passed by the Trial Court. All the above noted arguments are, thus, rejected at the threshold.

11. However, at this stage, while assailing the reasoning given by the Trial Court for rejecting application under Order VII Rule 11 CPC by excluding the period from 15.03.2020 to

28.02.2022, on the request made by learned Senior Counsel for the petitioner, we post the matter on **25.08.2023 at 02:30 PM** to enable him to go through the decision of the Apex Court on the issue adjudicated by the Trial Court. However, interim order granted earlier shall continue to operate till the next date of hearing.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

SAHIL S. RANGER