



2025:DHC:2152



\$~35

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

% *Date of Decision: 24.03.2025*

+ C.R.P. 78/2024

SANJEEV YADAV

....Petitioner

Through: Mr. Anshul Mittal, Mr. Sameer Dawar, Mr. Sarthak Tagra and Ms. Khushi Aggarwal, Advocates.

versus

SEEMA

....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] seeking to challenge an order 13.09.2023 passed by the learned ADJ-03, Rohini Courts, North District, Delhi by which the Application under Order VII Rule 11(d) of the CPC filed by Petitioner was dismissed by the learned Trial Court.
2. None has appeared on behalf of the Respondent despite service.
3. A Coordinate Bench of this Court had by an order dated 11.03.2024 stayed the proceedings before the learned Trial Court.
4. In view of the above, this Court deems it apposite to take up this matter for hearing and final disposal today.



2025:DHC:2152



5. Learned Counsel for the Petitioner submits that as per the Complaint, the cause of action to file the present case arose on 06.02.2013 when the Petitioner received a sum of Rs.45 lacs from the Respondent. It is further stated in the Complaint that the cause of action further arose on various dates when the Respondent/Plaintiff requested the Petitioner/Defendant to return the loan amount, however, the said amount was not returned.

5.1 It is stated in the Complaint that the cause of action further arose when the legal Notice got served on the Petitioner.

6. Learned Counsel for the Petitioner also takes the attention of the Court through the documents filed along with the Complaint as well as legal Notice which is annexed along with the Complaint to submit that the Complaint is grossly barred by limitation, however the learned Trial Court has not dealt with this aspect of the matter. He seeks to rely on Paragraph 5 of the Impugned Order, wherein it is stated that the aspect of limitation has already been dealt with by the learned predecessor Court.

6.1 Learned Counsel for the Petitioner further relies on the order dated 19.11.2018 which is passed by the predecessor to submit that neither Court has dealt with the aspect of limitation.

7. This Court agrees with the contentions of the learned Counsel for the Petitioner. A perusal of the order dated 19.11.2018 shows that the Court at the time of issuance of summons, noted the contentions of the Plaintiff that the loan was advanced on 06.02.2013 for a period of 3 years and that the cause of action became due after the expiry of 3 years, i.e., on 06.02.2016. Based on these averments, summons were issued.

8. The learned Trial Court subsequently passed an order on 13.09.2023



wherein the following directions were passed:

“5. On perusal of order dated 19.11.2018, it is found that the aforesaid aspect of limitation is already dealt by the Ld. Predecessor of this court. This court is tandem with the findings of the Ld. Predecessor and therefore, the application of the defendant under Order 7 Rule 11 CPC is dismissed. Otherwise also, the question of limitation is a mixed question of law and fact and at the stage of rejection of plaint, the veracity of the averments made in the plaint cannot be examined.”

9. As stated above, the learned Trial Court has given two findings. One, that the issue has already been dealt with on 19.11.2018 and second, that limitation is a mixed question of fact and law.

10. While there is no quarrel with the legal proposition that limitation is a mixed question of fact and law, the Plaintiff (Respondent before this Court) is required to show as to how limitation has been extended so as to come within the provisions of the Limitation Act, 1963. The Schedule of the Limitation Act, 1963 provides for limitation period as applicable in the following terms:

| Description of suit | Period of limitation | Time from which period begins |
|---------------------------------------|----------------------|-------------------------------|
| ... | ... | ... |
| 19. For money payable for money lent. | Three years. | When the loan is made. |
| ... | ... | ... |

10.1 The said provision clearly provides the money to be payable as within 3 years from when the loan was made.

11. Quite clearly, the Impugned Order has been passed in a mechanical



2025:DHC:2152



manner and without application of law in this behalf. The Impugned Order is accordingly set aside.

11.1 The learned Trial Court is however directed to examine the Application filed by the Petitioner afresh in accordance with law.

12. The Petition is disposed of in the foregoing terms. Interim order stands vacated.

TARA VITASTA GANJU, J

MARCH 24, 2025/pa

Click here to check corrigendum, if any