



2025:DHC:1121



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

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*Date of decision: 20.02.2025*

+ **CM(M) 352/2025 & CM APPL. 10381/2025 STAY**

M/S THEMISIS MEDICARE LTD. ....Petitioner

Through: Mr. Vaibhav, Advocate

versus

M/S. DYNAMIC LABELS AND PACKAGING .....Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**JUDGMENT (ORAL)**

**RAVINDER DUDEJA, J.**

1. This is a petition under Article 227 of the Constitution of India challenging the orders dated 24.08.2015 and 14.11.2024 passed by the learned District Judge, North Rohini Courts in CS DJ/58736/2016 whereby the application under Order VII Rule 11 CPC filed by the petitioner has been dismissed.

2. In a nutshell, the brief facts are that the respondent filed a suit for recovery of Rs.11,72,883/- against the petitioner claiming that the petitioner had placed purchase orders and after satisfactory completion, the respondent raised bills. Despite partial payment, Rs.8,62,413/- remained due to the respondent.



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3. The petitioner filed written statement objecting to the maintainability of the suit claiming that it was barred by limitation as the business transactions took place between April 2010 and June 2011 but the suit was filed in October 2014.

4. The trial court framed the issue of limitation as a preliminary issue, and after hearing arguments ruled that the decision on the question of limitation requires evidence, thereby dismissing the petitioner's objection.

5. Subsequently, the petitioner filed an application under Order VII Rule 11 CPC for rejection of the plaint on the ground of limitation. Trial court dismissed the application on 14.11.2024 relying on its previous order dated 24.08.2015. Feeling aggrieved by both the orders, petitioner has filed the present petition challenging the same.

6. Learned counsel for the petitioner submits that the business transactions between the petitioner and the respondent took place between April 2010 to June 2011. Thus, the suit having been filed by the respondent in the month of October 2014 is filed much beyond the prescribed period of limitation of three years. Therefore, the suit is barred by limitation and ought to have been rejected by the trial court.

7. In para 4 of its plaint, the respondent had specifically averred that the statement of account in respect of the total outstanding bill of the defendant was sent to the defendant by speed post on 04.10.2011 for its confirmation but the defendant did not point out any discrepancy in the statement regarding the outstanding amount. Thus, having accepted the same in its email dated 11.10.2011, the defendant



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acknowledged its liability to pay the dues and debts pending towards the plaintiff, while stating that all the bills mentioned from April 2010 to June 2011 appear in the Hardwar records of their office and asked the plaintiff to seek the payment from the head office of the defendant.

8. Learned counsel for the petitioner submits that there is no unequivocal and unambiguous admission of the existing liability by the petitioner in the referred email and that the trial court erroneously interpreted the response as acknowledgment of subsisting liability despite the absence of any express admission of liability. It is argued that the email was sent by the petitioner as a response to the email sent by the respondent but it nowhere acknowledges any liability.

9. On the basis of the objections in the written statement regarding limitation, the trial court had framed a specific issue as to whether the suit of the plaintiff was time barred. The said issue was taken up as a preliminary issue. After hearing the parties, vide impugned order dated 24.08.2015, the learned trial court was of the view that the question of limitation would require evidence. The relevant para of the order dated 24.08.2015 reads as under:-

*“Having heard the submissions made by the Ld. Counsel for the parties and after gone through the case file this court is of the considered view that during the course of the arguments the defendant has admitted the e-mail dt. 11.10.11 but he has considered the e-mail dt.11.10.11 then the suit ought to have been filed on or before 11.10.14 and the present suit has been filed on 09.10.14. So far as the admissibility of the e-mail dt. 11.10.11 is concerned the same can only be decided after leading the evidence of the parties. Therefore, at this stage, the suit of the plaintiff cannot be dismissed by deciding that the*



*same is beyond period of limitation and the point of limitation required evidence.”*

10. Admittedly, the order dated 24.08.2015 was never challenged by the petitioner. Once the trial court already ruled that evidence was required for the purpose of determination of the issue of limitation, it is not understood as to why an application under Order VII Rule 11 CPC raking the same issue was filed again. The relevant paras of the order dated 14.11.2024 read as under:-

“6.) Perusal of the record shows that in para 4 of the plaint, it is the case of the plaintiff that vide e-mail dt. 11.10.2011, defendant acknowledged his liability. The suit, is filed on 09.10.2014 and the same cannot be barred by limitation. It is settled law that at the stage of rejection of plaint, only averments in the plaint are to be seen (reliance is placed upon case titled as Saleem Bhai v. State of Maharashtra, reported in(2003) I SCC 557, decided by the Hon'ble Supreme Court).

7.) It is rightly contended by counsel for plaintiff that these arguments have already been dealt with vide order dated 24.08.2015.

Further, limitation is a mixed question of law and facts and issue no. 2 has already been framed regarding limitation on 21.04.2015. In considered opinion of this Court, the issue no. 2 will be decided during final arguments in the suit after full evidence has been led by the parties. The plaint cannot be rejected at this stage. **Application under Order 7 Rule 11 CPC is dismissed. However, nothing stated in this order with effect the merits of the main suit.”**

11. It seems that the petitioner deliberately raked up the issue of limitation by filing an application under Order VII Rule 11 CPC so that he would get a fresh limitation period to challenge the order, even though he had not challenged the previous order dated 24.08.2015.



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This seems to be an abuse of process of law.

12. Trial court has correctly ruled that the question of limitation in the present case was a mixed question of law and fact to be decided during final arguments after full evidence has been led by the parties. I do not find any perversity or illegality in the said order.

13. There is no merit in the present petition. The petition is therefore dismissed.

**RAVINDER DUDEJA, J**

**FEBRUARY 20, 2025/ib**

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