V.Ambalavanan vs B. Murugeswaran

Author: R.Subramanian

Bench: R.Subramanian

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.02.2019 | Delivered on 27.02.2019

CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application No.2996 of 2015
in CS No.837 of 2014

V.Ambalavanan ... Petitioner/7t

Vs

1. B. Murugeswaran
2. S.Chandrasekaran
3. Rahamath Nishabi
4. Kalpagam Ramakrishnan
5. Abdul Hakeem
6. Shahul Hameed
7. Basheer Ahmed ...Respondents/Defenda

Prayer: Application is filed under Order XIV Rule 8 of the Original

Rules read with Order VII Rule 11 (a), (b) and (d) of the Code of C

Procedure, praying to reject the Plaint in C.S.No.837 of 2014.

For Petitioner : Mr.Richardson Wilson (D7)

For Respondents : Mr.T.V.Ramanujan, SC
for M/s. C.Jagadish
for Mr.N.C.Ashok Kumar for R1/Plain

M/s.L.S.M. Hasan Fizal for D2,

ORDER

The 7th defendant in CS No.837 of 2014, who is the allienee from defendants 4, 5 and 6 has come forward with this application under Order 7 Rule 11(d) of the Code of Civil Procedure seeking rejection of the plaint. The suit in CS No.837 of 2014 has been laid by the 1st respondent/plaintiff seeking specific performance of the agreement evidenced by the Memorandum of Understanding dated 23.11.2005 under which the 2nd defendant had agreed to sell the suit property to the 1st defendant.

2. The claim of the plaintiff is that the 1st defendant had by a deed of assignment dated 30.10.2006 assigned the rights under the Memorandum of Understanding in favour of the plaintiff. An alternative relief for refund of advance has also been prayed in the suit.

3. The facts that led to the filing of the suit are as follows:

> The 2nd defendant, who is the owner of the property along with the 3rd defendant a felicitator had entered into the Memorandum of Understanding on 23.11.2005 with the 1st defendant. In and by the said Memorandum of http://www.judis.nic.in Understanding, the 2nd defendant had agreed to sell the suit property for a consideration of Rs.12,80,000/- per ground. According to the plaintiff, the 1st defendant has paid an advance of Rs.35,11,000/- on the date of the agreement and a further advance of Rs.2,00,000/- was paid on 03.04.2006.
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> The same is evidenced by the endorsement made in the Memorandum of Understanding itself.

4. The essential terms of the agreement are that i. The balance of sale consideration is to be paid within three months from the date on which the party of the first part namely, the second defendant acquires the land from the Tamil Nadu Housing Board.

ii. The 2nd defendant had further agreed to acquire an area of 20 feet into 127 feet within a short time from the Tamil Nadu Housing Board.

iii. The said Memorandum of understanding also contains an Arbitration Clause by which one C.H.Ramakrishan, a Chartered Accountant has been appointed to be the sole Arbitrator.

5. On 20.02.2006, the 1st defendant entered into an agreement of sale with the plaintiff. Agreeing to sell the 22 grounds of land in favour of the http://www.judis.nic.in plaintiff for a total consideration

of Rs.4,00,51,000/-. The plaintiff had also paid a sum of Rs.10,00,000/- towards advance on the date of the agreement. It is the further case of the plaintiff that he has paid another sum of Rs.15,00,000/- on 24.08.2006 and Rs.10,00,000/- on 07.09.2006. The 1st defendant also executed a deed of assignment on 30.10.2006 in favour of the plaintiff, in and by which, he assigned the rights obtained by him under the Memorandum of Understanding dated 23.11.2005 in favour of the plaintiff. Since the defendants 1 and 2 did not come forward to execute the sale deed as agreed too. The plaintiff caused a legal notice to be issued on 15.11.2006 demanding specific performance of the Memorandum of Understanding dated 23.11.2005. The defendants 2 and 3 sent a reply dated 27.11.2006 claiming that the Memorandum of Understanding is a contingent contract and hence the same cannot be specifically enforced. It was also claimed that the 2nd defendant, who is the owner of the property, had executed a registered Settlement Deed in favour of her children on 08.06.2006, which was known to and accepted by the 1st defendant. It was also pointed out that the 1st defendant attested the said document. In essence, defendants 2 and 3 refused to comply with the demand of the plaintiff for specific performance. Thereafter, on 14.06.2007 the defendants 4 to 6, who are the children of the 2nd defendant sold the property in favour http://www.judis.nic.in of the 7th defendant. By an instrument cancellation dated 04.09.2007, the Memorandum of Understanding dated 23.11.2005 was cancelled by defendants 1 to 3.

6. The plaintiff thereupon filed the Original Application in OA No.448 of 2009 under Section 9 of the Arbitration and Conciliation Act, seeking an order of injunction restraining the respondents 4 to 6 from alienating or dealing with the property. The said application was filed on 19.02.2009.

7. The application was resisted by the defendants contending that the Memorandum of Understanding itself being a contingent contract is not specifically enforceable, it was also claimed that the 1st defendant had given up his rights under the Memorandum of Understanding by signing as an attestor to the settlement deed dated 08.06.2006. The deed of cancellation dated 04.09.2007 was also projected by the defendants as a circumstance to deny the relief to the plaintiff. Pending the above said application, the plaintiff filed the Original Petition in OP No.101 of 2011 seeking appointment of an Arbitrator. The said application was also resisted by the defendants claiming that the plaintiff/petitioner in OP No.101 of 2011, being a third party to the Memorandum of Understanding dated 23.11.2005, cannot invoke the Arbitration Clause in the said Memorandum of Understanding. It was also http://www.judis.nic.in contended that the application is barred by limitation, inasmuch as the period of limitation commenced from the date on which the defendants, by the reply notice, refused to comply with the demand of the plaintiff for specific performance. Subsequently on 12.09.2014, the plaintiff withdrew OP No.101 of 2011 with liberty to take such action in law as shall be permissible to the petitioner. Thereafter, the plaintiff has come forward with the present suit seeking specific performance.

8. The 7th defendant has filed the instant application seeking rejection of plaint. Primarily contending that the suit is barred by limitation and that there is no cause of action for the suit. According to the applicant/7th defendant, the cause of action for the plaintiff to sue for specific performance arose on 27.11.2006, when the defendants sent the reply notice expressing their stand that the agreement dated 23.11.2005 has become incapable of performance and the assignment made by the 1st defendant is not binding on them. Therefore, according to the applicant, the suit

filed on 17.12.2014 is clearly barred by limitation.

9. It is the further case of the applicant that the Memorandum of Understanding dated 23.11.2005 itself is a contingent contract and it depends on the acquisition of an area measuring 20 feet into 127 feet by the http://www.judis.nic.in 2nd defendant from the Tamil Nadu Housing Board, inasmuch as the said part of the contract is contingent and the 2nd defendant having not acquired the extent of 20 feet into 127 feet from the Tamil Nadu Housing Board, the Memorandum of Understanding dated 23.11.2005 has become unenforceable. It is the further case of the applicant that the suit does not disclose a cause of action. The applicant would also rely upon the deed of cancellation dated 04.09.2007 under which the Memorandum of Understanding was cancelled.

10. The said application is resisted by the plaintiff contending that while considering the application for rejection of plaint only the plaint averments must be taken into account. If the plaint averments alone are taken into account, the suit does not appear to be, on the face of it, barred by limitation. The plaintiff/1st respondent would further contend that the cause of action for the suit is a continuing cause of action and the time for performance begins to run only from the date on which, the 2nd defendant acquires title to the extent of 20 feet into 127 feet, as per the clause 9 of the Memorandum of Understanding dated 23.11.2005. Therefore, according to the plaintiff, the suit cannot be said to be barred by limitation.

11. The plaintiff would also contend that the plaintiff having bona fide http://www.judis.nic.in prosecuted the proceedings under Section 9 and Section 11 of the Arbitration and Conciliation Act, would be entitled to exclude the period during which the proceedings were pending. If the period during which the proceedings are pending is excluded, the suit will be well within time.

12. The 1st respondent/plaintiff would further contend that the 1st defendant had assigned the rights under the agreement dated 30.10.2006 and therefore he had no right to enter into the deed of cancellation dated 14.06.2007. The plaintiff/1st respondent would further contend that the claim of the applicants that the suit itself is based on contingent contract is not correct. Section 12 of the Specific Relief Act, enables the plaintiff to seek performance on the part of the contract which is capable of being performed. Therefore, according to the plaintiff/1st respondent, the case on hand is not a fit case where the Court would exercise the power under Order 7 Rule 11 of the Code of Civil Procedure, to reject the plaint at the threshold.

13. I have heard Mr.Richardson Wilson, learned counsel appearing for the applicant/7th defendant, Mr.T.V.Ramanujam, learned Senior counsel appearing for Mr.C.Jagadish for the 1st respondent/plaintiff and M/s.L.S.M.Hasan Fizal, learned counsel appearing for defendants 2, 4 to 6. http://www.judis.nic.in

14. From the pleadings of the parties narrated above the only issue that would arise for consideration is that Whether the plaint in CS No.837 of 2014 would be rejected as

(a) Barred by Limitation?

(b) Not disclosing a cause of action?

15. Mr.Richardson Wilson, learned counsel appearing for the applicant/7th defendant would vehemently contend that the suit is, on the face of it, barred by limitation. According to the learned counsel, the cause of action for the plaintiff to seek specific performance arose on 27.11.2006, when the defendants specifically expressed their inability to comply with the demand for specific performance of the Memorandum of Understanding dated 23.11.2005. He would further contend that the filing of an Application under Section 9 of the Arbitration Act, will not have the effect of stopping the limitation that had started running from 27.11.2006. He would further point out that the plaintiff had for the first time issued a notice under Section 21 of the Arbitration and Conciliation Act, only on 13.08.2010, which is beyond the period of three years from 27.11.2006. The learned counsel would also seek rely upon Section 21 of the Arbitration and Conciliation Act, which provides that an Arbitration proceeding shall be deemed to have http://www.judis.nic.in commenced only on issuance of a notice demanding appointment of an Arbitrator under Section 21. Therefore, according to the learned counsel, if at all the plaintiff could be said to have taken some action seeking specific performance it was only on 13.08.2010 and not before. Even as on that date, the plaintiff had lost the right to seek specific performance.

16. Mr.Richardson Wilson, learned counsel would further contend that the plaintiff is not entitled to invoke Section 14 of the Limitation Act, as the same would apply only when the Court had concluded that it had no jurisdiction to entertain the proceedings initiated. Pointing out that the plaintiff had chosen to withdraw the application filed by him under Section 11 of the Arbitration Act, with liberty to take appropriate legal proceedings, Mr.Richardson Wilson, would submit that since there had been no determination on merits and the Court had not come to the conclusion that it had no jurisdiction to entertain the proceeding, the plaintiff cannot have the benefit of Section 14 of the Limitation Act.

17. It is the further contention of the learned counsel for the applicant that the very agreement, namely the Memorandum of Understanding dated 23.11.2005 is a contingent contract, the performance of which depends on the 2nd defendant being able to acquire title to an extent of 20 feet into 127 http://www.judis.nic.in feet facing the road from the Tamil Nadu Housing Board.

18. Relying upon the admitted fact that the 2nd defendant had not acquired such title, the learned counsel would submit that the entire contract has become incapable of performance. Therefore, the suit itself, seeking specific performance of the contingent contract, is not maintainable. It is the further plea of the learned counsel for the applicant that once the Memorandum of Understanding dated 23.11.2005 becomes incapable of performance, the plaintiff would not get any right either under the agreement dated 20.02.2006 or under the deed of assignment dated 30.10.2006. The learned counsel would further contend that once the Court finds that the plaintiff will not succeed in the suit, assuming the plaint allegation to be true and correct, the defendant should not be forced to undergo the ordeal of trial.

19. In support of his submissions, the learned counsel would rely upon (1) a Division Bench judgment of this Court in Dr.L.Ramachandran v. K.Ramesh and others, reported in 2015 (5) CTC

629, wherein it was held that a suit which is exfacie barred by limitation can be rejected invoking Order 7 Rule 11 of the Code of Civil Procedure, while doing so, the Division Bench has observed as follows:

> http://www.judis.nic.in "26. In terms of Order 7 Rule 11 (d) CPC, the Plaint shall be rejected where the suit appears from the statement in the Plaint to be barred by any law. The scope of Rule 11 of Order 7 CPC has been explained in various decisions and the legal principle deducible are that, if the Plaint does not disclose the cause of action or is bared by law; can be rejected where the litigation was utterly vexatious and abuse of process of Court; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority. Thus, the provision of Order 7 Rule 11 PC being procedural is designed and aimed to prevent vexatious and frivolous litigation. The plaint is liable to be rejected on the ground of limitation only where the suit appears from the statements in the plaint to be barred by any law and the law within the meaning of clause (d) of Order 7 Rule 11 CPC, shall include law of limitation as well. " (2) N.A.Chinasami, C.Sethupathy v. S.Vellingirinathan, reported in 2013 (5) LW 350, wherein a Single Judge of this Court had held as follows:
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> "53. Having considered the plaint averments and http://www.judis.nic.in the admitted documents, copy of the notice issued by the respondent/plaintiff and the other public document, namely G.O.(2D) No.19, Municipal Administration and Water Supply (T.P.II) Department, dated 25.03.2010, it has been made crystal clear that the suit itself is a clear abuse of process of law and court. There is no legally acceptable cause of action available to the respondent/plaintiff, for the relief sought for in the plaint, the suit is also barred by statute, namely the Limitation Act, hence, this Court is of the view that there is no chance of the suit succeeding and accordingly, to meet the ends of justice and to prevent abuse of process of court, this revision has to be allowed and pass orders to struck off the plaint, invoking Article 227 of the Constitution." (3) Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, reported in 2012 (8) SCC 706, wherein the Hon'ble Supreme Court had held as follows:
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> "25. The stand taken by the appellant, who has filed the application for rejection of the plaint, is sustainable and acceptable. We have already adverted to the averments in the plaint and we have held that the plaint has not shown a complete cause of action of privity of contract between the plaintiff and the first defendant or on behalf of the 1st defendant. To reject the plaint even before registration of the plaint on one or more grounds http://www.judis.nic.in mentioned in Order VII Rule 11 of the Code, the other defendants need not necessarily be heard at all as it does not affect their rights. As a matter of fact, this Court in Saleem Bhai (supra) held that the plaint can be rejected even before the issuance of summons. This Court has taken a view that the trial Court can exercise its power under Order VII Rule 11 of the Code at any stage

of the suit i.e. before registering the plaint or after issuance of summons to the defendants or at any time before the conclusion of the trial. We respectfully agree with the said view and reiterate the same." (4) Hardesh Ores (P) Ltd. V. Hede and Company, reported in 2007 (5) SCC 614, wherein the Hon'ble Supreme Court had observed that a suit which is exfacie barred by limitation can be rejected invoking the provisions of Order 7 Rule 11 (d). While doing so, the Hon'ble Supreme court has observed as follows:

"25. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out http://www.judis.nic.in from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense..... (5) Sopan Sukhdeo Sable and Others v. Assistant Charity Commissioner and Others, reported in 2004 (3) SCC 137, wherein the Hon'ble Supreme Court had considered the nature and scope of Order 7 Rule 11, the stage at which an application seeking rejection of plaint could be filed and entertained. In para 12 of the said judgment, the Hon'ble Supreme Court has after referring to T.Arivandandam v.

T.V. Satyapal, reported in 1977 (4) SCC 467 had observed as follows:

"12. The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not http://www.judis.nic.in disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code.

17. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits.

Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised."

20. In support of his submission that the suit is barred by Limitation, Mr.Richardson Wilson, learned counsel would rely upon Section 21 of the Arbitration and Conciliation Act 1996, which provides that an Arbitration http://www.judis.nic.in proceeding is deemed to have commenced only from the date on which a notice seeking appointment of Arbitrator is issued under the said Section. In order to buttress his submission, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court in Panchu Gopal Bose v. Board of Trustee for Port of Calcutta, reported in 1993 (4) SCC 338, wherein the Hon'ble Supreme Court had held that Section 3 of the Limitation Act would apply to Arbitration proceedings also and the Arbitration proceedings shall be deemed to have commenced, when one party to Arbitration agreement serves on the another party thereto, a notice requiring the appointment of an Arbitrator.

21. He would also draw my attention to another judgment of the Hon'ble Supreme Court in Union of India v. Momin Construction Co., reported in 1997 (9) SCC 97, wherein also the Hon'ble Supreme Court had reiterated the position of law spelt out in 1993 (4) SCC 338. He would also draw my attention to another judgment of the Hon'ble Supreme Court in Utkal Commercial Corporation v. Central Coal Fields Ltd, reported in 1999 (2) SCC 571, wherein the Hon'ble Supreme Court again reiterated the position that the Arbitration proceedings shall be deemed to have commenced only from the date on which one of the parties seek appointment of an Arbitrator.

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22. Relying upon the judgment of the learned Single Judge of Delhi High Court in Lal Mahal Limited v. Abdul Ghaffiar and another, reported in 2018 SCC online Del 8597, the learned counsel would contend that Section 14 of the Limitation Act, would not in terms apply, inasmuch as there was no determination by a Court to the effect that the proceedings launched by the plaintiff under the Arbitration Act should faith for defect of jurisdiction.

23. Contending contra, Mr.T.V.Ramanujam, learned Senior counsel appearing for the 1st respondent/plaintiff would submit that this is not a case where the suit could be said to be exfacie barred by limitation. According to him, the questions:

i. Whether the cause of action arose on receipt of the reply notice dated 27.11.2006;

ii. Whether the plaintiff is entitled to invoke Section 14 of the Limitation Act or not;

iii. Whether the plaintiff would be entitled to seek part performance of the agreement are all mixed questions of fact and law and they cannot be conveniently decided without evidence being let in.

24. Once it is found that the plaint is not on the face of it barred by http://www.judis.nic.in limitation, Order 7 Rule 11(d) cannot be invoked to throw the plaint out at the threshold. The learned Senior Counsel would also further contend that the claim of the 7th defendant, who is the purchaser to the effect that the Memorandum of Understanding dated 23.11.2005 is a contingent contract cannot at all be entertained. In support of his submission, the learned Senior Counsel would rely upon the following judgments.

1. Vaish Aggarwal Panchayat v. Inder Kumar and Others, reported in 2015 SCC online SC 751, wherein the Hon'ble Supreme Court has held that if it could not be held that the suit is barred by time on a mere reading of the plaint, the plaint cannot be rejected under Order 7 Rule 11, while doing so, the Hon'ble Supreme Court has after referring to the various pronouncements observed as follows:

> "17. Coming to the case at hand we find that the allegations in the plaint are absolutely different. There is an asseveration of fraud and collusion. There is an assertion that in the earlier suit a decree came to be passed because of fraud and collusion. In such a fact situation, in our considered opinion, the High Court has fallen into error by expressing the view that the plea of resjudicata was obvious from the plaint. In fact, a finding http://www.judis.nic.in has been recorded by the High Court accepting the plea taken in the written statement. In our view, in the obtaining factual matrix there should have been a trial with regard to all the issues framed."

2. Narender Kumar Nangia v. Harjinder Pal Singh, reported in, 2018 SCC online SC 1537, wherein the Hon'ble Supreme Court upheld the order of the Trial Court which concluded that the question of Limitation being a mixed question of law and the fact depending on the evidence to be let in, cannot be a ground for rejection of the plaint.

3. Chhotanben and another v. Kiritbhai Jalkurshnabhai Thakkar and others, reported in 2018 (6) SCC 422, wherein, a three Judge Bench of the Hon'ble Supreme Court had observed as follows:

> "15. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any 14 application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common http://www.judis.nic.in ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellant-plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers
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> - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately

took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant 1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized 15 that the original defendant 1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by http://www.judis.nic.in respondent 1 -defendant No.5 for rejection of the plaint under Order VII Rule 11(d). That view commends to us.

20. In the above conspectus, we have no hesitation in reversing the view taken by the High Court and restoring the order of the Trial Court rejecting the application (Ext.21) filed by respondent 1 - defendant 5 under Order VII Rule 11(d) CPC. Consequently, the plaint will get restored to its original number on the file of the IVth Additional Civil Judge, Anand, for being proceeded further in accordance with law. We may additionally clarify that the Trial Court shall give effect to the order passed below Ext.17 dated 20.1.2016, reproduced in para 8 above, and take it to its logical end, if the same has remained unchallenged at the instance of any one of the defendants. Subject to that, the said order must be taken to its logical end in accordance with law."

25. The learned Senior Counsel would also submit that the decisions regarding the applicability of Section 14 of the Limitation Act as well as the commencement of Arbitral proceedings, which are relied upon by the learned counsel for the applicant having been rendered prior to the coming into force of the Arbitration and Conciliation Act 1996, may not hold good in the changed scenario. According to the learned Senior Counsel, question whether the plaintiff would be entitled to invoke Section 14 or not, would http://www.judis.nic.in again depend on the evidence that is to be let in and the same cannot be the basis for the rejection of the plaint.

26. I have considered the rival submissions.

27. No doubt true, the arguments of Mr.Richardson Wilson, learned counsel appearing for the applicant appears very attractive at the first blush.

I must point out that while dealing with an application Order 7 Rule 11 seeking rejection of the plaint, the Court cannot look into anything other than the averments made in the plaint. If only the Court could come to the conclusion that the suit is barred by limitation or that there is no cause of action for the suit or the suit is an abuse of process of law on the basis of the averments in the plaint, the plaint can be rejected under order 7 Rule 11 and not otherwise.

28. Coming to the facts of the present case, the plaintiff had specifically averred in the plaint that he would be entitled to exclusion of the time during which he had bona fide prosecuted the proceedings under Sections 9 and 11 of the Arbitration and Conciliation Act. He had also pleaded that he would be entitled to part performance of the agreement under Section 12 of the Specific Relief Act. If it is assumed that the plaintiff http://www.judis.nic.in is entitled to the benefits of Section 14 of the Limitation Act, then it cannot be said that the suit is exfacie barred by time.

29. As rightly contended by Mr.T.V.Ramanujam, learned Senior Counsel appearing for the plaintiff/first respondent, a rejection of the plaint on the ground of the Limitation can happen only if the plaint could be said to be on the face of it barred by Limitation. Even the Division Bench in Dr.L.Ramachandran case, referred to supra, has observed that the plaint could be rejected on the ground of Limitation, only if it appears from the statement in the plaint to be barred by limitation and the law within the meaning of Clause (d) of Order 7 Rule 11 shall include law of limitation as well. In 2018 (6) SCC 422, referred to supra, the three Bench of the Hon'ble Supreme Court had again reiterated that the defence available to the defendants or a plea taken by them in the written statement or any application filed by them, cannot be used to decide the application under Order 7 Rule 11(d). Only the plaint averments will have to be looked into. If we are to look into the plaint averments in the case on hand, the plaintiff has specifically pleaded that he is entitled to the benefits of exclusion on the period taken by the proceedings launched by him under the Arbitration and Conciliation Act, 1996. It is one thing to say that the plaintiff will not be entitled to exclusion, but the fact whether that the plaintiff is entitled to http://www.judis.nic.in exclusion or not has to be decided on evidence. Till such time, the question whether the plaintiff is entitled to the benefits of exclusion available under Section 14 of the Limitation Act, is decided it will have to be presumed that the plaint is in time in view of the averments made in the plaint to the effect that the plaintiff is entitled to benefits of exclusion of the time available to him under Section 14 of the Limitation Act. Therefore, while conceding the position of law that a bar under the law of Limitation would also be a ground for rejection of a plaint, I am constrained to conclude that the case on hand is not a fit case where the plaint could be rejected as being barred by Limitation.

30. The very issue as to whether the plaintiff would be entitled to exclusion of time, as to whether, the reply notice dated 27.11.2006 could be said to be a refusal on the part of defendants 4, 5 and 6 to perform the contract etc. will have to be decided on merits after evidence is let in. I am therefore, constrained to conclude that the plaint cannot be rejected on the ground that it is barred by limitation.

31. No doubt true, Mr.Richardson Wilson, learned counsel appearing for the applicant/7th defendant, would strenuously argue that the plaintiff is not entitled to exclusion of time taken by the proceedings launched by him http://www.judis.nic.in under the Arbitration Act. I do not think that the said question could be decided, on the face of the allegations made in the plaint, against the plaintiff. The decisions relied upon by Mr.Richardson Wilson, regarding the point of time at which the Arbitral proceedings will be said to have commenced, we are all rendered under the Arbitration Act 1940. In a number of decisions under the Arbitration and Conciliation Act 1996, the Hon'ble Supreme Court has held that the Arbitration proceedings are also proceedings in a Court of law to which Section 14 would apply.

32. In M.P.Streel Corporation v. Commissioner of Central Excise, reported in 2015 (7) SCC 58, the Hon'ble Supreme Court had pointed out that the underlying principles of Section 14 could be extended to Quasi Judicial Tribunal is also. In fact the question whether the proceedings under Section 9 and Section 11 of the Arbitration and Conciliation Act, being proceedings taken in a Court of Law could be termed as Civil proceeding falling within the ambit of Section 14(1) is again a mixed question of fact and law. As already pointed out while deciding an application under Order 7 Rule 11 the Court is bound to assume that all the allegations made in the plaint are true and correct. If the allegations in the plaint are assumed to be true and correct, the entitlement or otherwise of the plaintiff to the benefits of Section 14 cannot be said to be a pure question of law. May be that the http://www.judis.nic.in defendants have a very good defence in the suit for specific performance, but the same alone cannot form the basis for rejection of the plaint under Order 7 Rule 1 1 of the Code of Civil Procedure.

33. Coming to the case of the applicant that the suit does not disclose a cause of action, I am afraid that the said contention is based on certain assumptions made by the applicant/7th defendant. Admittedly, the 1st defendant had assigned his rights under the contract dated 23.11.2005 to the plaintiff on 30.10.2006. The fact that the 1st defendant had attested a settlement deed executed by the 2nd defendant in favour of defendants 4 to 6 on 08.06.2006, may not have been within the knowledge of the plaintiff, when the plaintiff took the deed of assignment on 30.10.2006. The 1st defendant having assigned the rights under the agreement to the plaintiff and having received a substantial a sum of money as advance had chosen to rescind the contract, subsequently on 04.09.2007. Seeds of doubt arise as to the conduct of the 1st defendant and the 2nd defendant in the whole transaction. I hasten to add that I am not pronouncing on the merits of the claim of the parties, but the conduct of the defendants 1 and 2, in my considered opinion is not above board.

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34. The plaintiff has definitely a right to sue either for specific performance or for refund of the advance paid by him. It cannot be said that a plaint does not disclose a cause of action, particularly when the 1st defendant has filed a counter in the applications filed by the plaintiff admitting the assignment made by him. In the applications filed by the plaintiff under the provisions of the Arbitration and Conciliation Act, 1996, admitting the assignment made by him in favour of the plaintiff. Therefore, I am of the considered opinion that it is not a fit case where the plaint could be rejected on any one of the grounds prescribed under Order 7 Rule 11 or under the ground that the plaint is an abuse of processes of law.

35. In fine the application is dismissed. However, considering the facts and circumstances of the case, the parties are directed to bear their own costs.

27.02.2019 Index : Yes/No Internet: Yes/No Speaking order/Non Speaking order jv http://www.judis.nic.in R.SUBRAMANIAN,J.

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