

GAHC010063322024



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : CRP/38/2024

ROTO TEKCHI ALIAS RATU TECHI AND ANR
THE THEN DIRECTOR OF THE DEFENDENT NO. 2 COMPANY, RESIDENT OF
MODEL VILLAGE , RESIDENT O MODEL VILLAGE NAGARLAGUN, PO AND
PS NAHARLAGUN, DIST PAPUMPARE, ARUNACHAL PRADESH, 791110

2: T.K ENGINEERING CONSORTIUM PRIVATE LIMTED
A COMPANY HAVING ITS REGISTERED OFFICE AT MODEL VILLAGE PO
AND PS NAHARLAGUN
DIST PAPUMPARE
ARUNACHAL PRADESH
79111

VERSUS

GAINWELL COMMOSALES PRIVATE LIMITED
FORMERLY KNOWN AS TRACTORS INDIA PRIVATE LIMITED, A COMPANY
INCORPORATED UNDERT THE PROVISIONS OF THE COMPANIES ACT, 1956
AND AN EXISTING COMPANY WITHIN THE MEANING OF COMPANIES
ACT, 2013 HAVING ITS OFFICE INTER ALIA AT GODREJ WATERSIDE,
TOWER II, 7TH FLOOR, UNIT NO. 705, BLOCK DP SECTOR V, SALT LAKE,
KOLKATA 700091, WEST BENGAL

Advocate for the Petitioner : MR. D MOZUMDER, MR. D MAZUMDAR,MR. S K DEORI

Advocate for the Respondent : MR R SINGHA, FOR CAVEATOR

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

28.08.2024

Heard Mr. D. Mazumder, learned Senior Counsel, assisted by Mr. S.K. Deori, learned counsel for the petitioners and Mr. P. Goswami, learned counsel for the respondent.

2. Correctness or otherwise of the order, dated 05.03.2024, passed by the learned Civil Judge, (Senior Division) No. 2, Kamrup (M) at Guwahati in Commercial Suit No. 135/2023, is challenged in this petition, under Section 115 of the Civil Procedure Code, by two petitioners, namely, Shri Roto Tekchi and T.K. Engineering Consortium Private Limited.

3. It is to be noted here that vide impugned order, dated 05.03.2024, the learned Civil Judge, (Senior Division) No. 2, Kamrup (M) Guwahati had dismissed the petition No. 310/2024, in Commercial Suit No. 135/2023, filed by the petitioner under Order VII Rule 11 of CPC for rejection of plaint of Commercial Suit No. 135/2023.

4. The background facts leading to filing of the present revision petition are adumbrated herein below:-

“The respondent herein this petition, namely, Gainwell Commosales Private Limited has instituted a Commercial Suit No. 135/2023, the learned Civil Judge, (Senior Division) No.2, Kamrup (M) Guwahati for recovery of a sum of Rs. 80,93,007/- from the present petitioners, namely, Shri Roto Tekchi and T.K. Engineering Consortium Private Limited, for the spare parts supplied to them in the year 2016. Then registering the suit, the learned the Civil Judge, (Senior Division) No.2, Kamrup (M)

Guwahati had issued summon to the present petitioners. Thereafter, the petitioners have entered appearance before the learned Civil Judge, (Senior Division) No.2, Kamrup (M) Guwahati and filed a petition being petition No. 310/2024, for rejection of the plaint, under Order VII Rule 11(d) of the Civil Procedure Code. Thereafter, hearing learned Advocates of both the parties the learned court had dismissed the same vide impugned order dated 05.03.2024 by holding that the pleadings of the parties indicates that there was a part payment of Rs.10,00,000/- as on 28.11.2018, and as such fresh period of limitation starts from that date and the period of limitation was supposed to expire on 28.11.2021, which falls within the period excluded by Hon'ble Supreme Court as per order dated 10.03.2022, for the period covering 15.03.2020 to 28.02.2022, as such the balance period is 1 year 8 months 15 days, till the month of November, 2023 and hence the suit is found to be within the period of limitation.”

5. Being highly aggrieved the petitioners have preferred the present revision petition on the following grounds:-

(i) That, the impugned order is not tenable as the learned court had failed to appreciate that the respondent/plaintiff had failed to satisfy the condition precedent as required under the proviso to Section 19 of the Limitation Act;

(ii) That, the finding recorded by the learned court that the balance period is 1 year 8 months 15 days remains to file the suit is unsustainable as the learned court has solely relied upon the written statement, which is contrary to the settled legal position that the plaintiff has to made such claim in the plaint and fact that come into existence

after filing of the plaint cannot be called into aid to revive a right of action;

(iii) That, in the impugned order, no finding is recorded with regard to the payment made on 28.11.2018, wherein the plaintiff had annexed a document as Annexure 71 of the plaint, which clearly is not a written acknowledgement of the claim of the plaintiff and as such computing the period of limitation from 28.11.2018 cannot be made;

(iv) That, the exemption claimed under Section 19 of the Limitation Act has not been made in the plaint and it is well settled that while considering a petition under Order VII Rule 11(d) of the Civil Procedure Code the court has to consider only the averments made in the plaint, not in the written statement or objection filed by the plaintiff, as held by Hon'ble Supreme Court in the case of **Sant Lal Mahton vs. Kamala Prasad and Others**, in **Appeal No. 81 of 1950**; and

(v) That, Annexure-71 is clearly not a written acknowledgement of the claim of the plaintiff and as such computation of the period of limitation cannot be counted from 28.11.2018.

6. I have carefully gone through the petition and the documents placed on record and also perused the impugned order, dated 05.03.2024. Also I have gone through the relevant provision of law.

7. Order 7 Rule 11 CPC mandates rejection of a plaint in the following cases:

- (a) Where it does not disclose a cause of action;
- (b) Where the relief claimed is undervalued, and the

plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

- (c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) Where the suit appears from the statement in the plaint to be barred by any law;
- (e) Where it is not filed in duplicate; and
- (f) Where the plaintiff fails to comply with the provisions of Rule 9.”

8. It appears that the learned trial court had counted the period of limitation with effect from 28.11.2018. It also appears that the learned trial court had excluded the period (From 15.03.2020 till 28.02.2022) mentioned by Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 03/2020. The learned court below also held that as on 01.03.2022 the respondent had balance period of 1 year 8 months 15 days till the month of November, 2023 and as the said period is longer than 90 days, than longer period shall apply. Therefore, it has been held that the suit was within the period of limitation.

9. But, according to Mr. Mazumder, the learned trial court had committed mistake by counting the period of limitation from 28.11.2018 as there is no proof of compliance of proviso to Section 19 of the Limitation Act. Moreover, in the plaint there is no averment in respect of claiming benefit of section 19 of the Limitation Act. That being so, according to Mr. Mazumder, the period of limitation has to be counted from

the next date of balance confirmation i.e. 1st of July, 2018 and if the period is counted from 28.11.2018, the suit is clearly barred by the law of limitation even after excluding the period from 15.03.2020 till 28.02.2022. Mr. Mazumder has also referred following decision in support of his submission.

I) Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representative and Ors., reported in (2020) 7 SCC 366.

10. According to the averments made in the petitioner and also from the submission of Mr. Mazumder, the calculation of the period may be made as under:-

1	Balance Confirmation Statement date	01.07.2018
02.	Total period of limitation from 01.07.2018 to 02.07.2021	1095 days
03.	Limitation exhausted till 15.03.2020 i.e. (01.07.2018 to 15.03.2020)	623 days
04.	Remaining period of limitation to file Title Suit	472 days
05.	Calculation of 472 days from 01.03.2022 (in view of order of Supreme Court in Suo Motu Writ Petition No. 03 of 2020) the Suit ought to have been filed on	16.06.2023
06.	Date of filing the Suit	28.06.2023
07.	Delay in number of days	12 days

11. On the otherhand, the contention of Mr. Goswami, the learned counsel for the respondent is that said proviso to Section 19 is applicable as exception to general rule due to use of the words "save in the case of", but, only for payment of interest that too before 1st day of January, 1928, and since in the case in hand, it is regard to

payment of debt and not of interest and the period is definitely after 1st of January, 1928 hence the proviso is not attracted. Mr. Goswami further submits that the suit survived the period of limitation. Firstly, Mr. Goswami submits that there was an oral agreement between the petitioner and the respondent on 21st June, 2021 and this has been stated in the objection period and the learned trial court also reflected the same in the order sheet. Secondly, Mr. Goswami submits that the petitioner has admitted in written statement that the payment of Rs.10,00,000/ on 28.11.2018 and this part payment is made within the period of limitation as the date of first indent was 03.02.2016. Thirdly, Mr. Goswami submits that when there is admission by the petitioner of part payment in his written statement, and that part payment is made within the period of limitation then the respondent need not prove the same as per Order XII Rule 6 of CPC. Therefore, Mr. Goswami has contended to dismiss the petition. Mr. Goswami also referred following case law in support of his submission.

(I) **Jiwanlal Achariya vs. Rameswarlal Agarwalla**, reported in **1967 1 SCR 190.**

12. From the written objection and also from the submission of Mr. Goswami the period of limitation can be counted as under:-

01.	Payment of Rs.10,00,000/ was made	28.11.2018
02.	Three years limitation with effect from 28.11.2018, would end on	28.11.2021
03.	Period of exclusion in view of order of Supreme Court is from 15.03.2020 till 28.02.2022	624 days
04.	The period of limitation to file the Suit to continue till	14.11.2023
05.	The Suit was filed	28.06.2023

13. In reply, Mr. Mazumder submits that the decision referred by Mr. Goswami is not at all applicable. Mr. Mazumder also submits that the concept of oral agreement is not there in contract Act. Further Mr. Mazumder submits that Order 12 Rule 6 CPC is not applicable herein this case as while dealing with the issue of limitation the court has to see only the averments made in the plaint and the documents enclosed therewith, not the averments made by the defendant in written statement.

14. It is worth mentioning in this context Section 19 of the Limitation Act read as under:--

“19. Effect of payment on account of debt or of interest on legacy—

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation – for the purposes of this Section –

(a) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) "Debt" does not include money payable under a decree or order of a court."

15. Thus, a perusal of the section indicates that in order to avail the benefit of Section 19 of the Limitation Act there must be an acknowledgment of the payment made in the handwriting of, or in a writing signed by, the person making the payment. Here in this case the respondent has only produced the bank slip, which is enclosed with the petition as Annexure 71 of the petition, without there being any acknowledgment of the payment made in the handwriting of, or in a writing signed by, the person making the payment. Mr. Goswami, the learned counsel for the respondents submits that the payment was made by cheque and thereafter, the bank had made payment by RTGS and the respondent will prove the same during hearing and that the proviso to Section 19 of the Limitation Act is not attracted herein this case. However, it appears that the document i.e. the bank slip, based upon which the exemption was sought for, bears no signature and the same cannot be treated as an acknowledgment of the payment made in the handwriting of the person making the payment. And even, if it is accepted for the sake of argument that proviso to Section 19 of the Limitation Act is not attracted yet, the respondent/plaintiff is not entitled to the benefit of the same for failing to make any averment in the plaint seeking exemption under Section 19 of the Limitation Act.

16. Mr. Mazumder, the learned counsel for the petitioner has rightly pointed this out during argument and there appears to be sufficient force in the same. And the decision of Hon'ble Supreme Court in **Raghabendra Sharan Singh vs. Ram Prassana Singh (Dead) By legal Representative**, reported in **(2020) 16 SCC 601**, also strengthened his submission. In the said case it has been held that considering the averments in the plaint if it is found that the suit is clearly barred by the law of limitation, the same can be rejected in exercise of power under Order VII Rule 11 (d) CPC.

17. It also appears that the respondent has relied upon the admission made by the petitioner in the written statement. The learned trial court had also relied upon the pleading of the parties, which includes not only the plaint but also the written statement in respect of payment of Rs. 10,00,000/- . But, as held in the **Raghabendra Sharan Singh (supra)** it is well settled that the relevant facts, which need to be looked into for deciding an application there under Order VII Rule 11 (d) CPC, are the averments made in the plaint. Reference in this context can also be made to a decision of Hon'ble Supreme Court in **Saleem Bhai and Ors. vs. State of Maharashtra and Ors.**, reported in **2003 (1) SCC 557**, where it was held by Hon'ble Supreme Court with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application there under are the averments in the plaint. *In the case of Liverpool and London S.P. and I Association Ltd. v. M.V. Sea Success*, reported in **(2004) 9 SCC 512**, Hon'ble Supreme Court clarified that courts, while dealing with such an application seeking rejection of a plaint, the courts have to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon. Again in the case of **Sopan Sukhdeo Sable vs. Assistant Charity Commissioner**, reported in **(2004) 2 SCC 137**, Hon'ble Supreme Court has clarified that while making such a determination, courts would have to disregard the pleas taken by the defendant in the written statement and application for rejection of the plaint on merit. Therefore, it was clarified that while determining any application filed under O 7 R 11, the courts should restrict itself to the plaint and should not go into the detail facts as provided under the written statement or even the application filed under Order 7 Rule 11.

18. Again in the case of **Shanti Conductors (P) Ltd. vs. Assam SEB**, reported in **(2020) 2 SCC 677**, Hon'ble Supreme Court has held as under :

“15. Order 7 Rule 6 uses the words “the plaint shall show the ground upon which exemption from such law is claimed”.

The exemption provided under Sections 4 to 20 of the Limitation Act, 1963 are based on certain facts and events. Section 19, with which we are concerned, provides for a fresh period of limitation, which is founded on certain facts i.e. (i) whether payment on account of debt or of interest on legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, (ii) an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.”

18.1 Again in para No. 23, it has been held as under:-

“23. We may further notice that para 24 of the plaint, which is a paragraph of cause of action for the suit, which refers to date beginning from 31-3-1992 till 5-10-1993 i.e. the beginning from the first supply order i.e. 31-3-1992 and date of last supply order i.e. 5-10-1993, but cause of action is not claimed from the date 5-3-1994, which was the date when the last payment was received by the petitioner. The petitioner in the plaint has clearly not pleaded for benefit of Section 19 nor has brought necessary facts to enable the Court to consider the claim under Section 19. We, thus, are of the view that the petitioner is not entitled for benefit of Section 19 of the Limitation Act and there is no error in the judgment of this Court dated 23-1-2019 holding that the suit of the plaintiff was barred by time.”

19. Thus, in the given facts and circumstances on the record and also in view of the settled legal position, it can safely be concluded that the benefit of Section 19

of the Limitation Act is not available to the respondent for failing to make any averment in respect of the same in the plaint of the suit, even if we accept for the sake of argument that the proviso to said section is not applicable. Thus, the period of limitation, here in this case, has to be calculated as under:-

Sl. No.	Year	Days	Remarks
01.	2018	183	
02.	2019	365	
03.	2020 (01.01.2020 to 14.03.2020)	74	The period from 15.03.2020 till 28.02.2022 has been excluded as per the Order of Hon'ble Supreme Court in <i>Suo Motu Writ Petition (C) No. 3 Of 2020</i> .
04.	2021 (Whole year)	Nil	
05.	2022 (01.01.2022 to 28.02.2022)	306	
06.	2023	178	
Total days elapse from 01.07.2018		1106 days	
Deduction of period of three years, w.e.f. from 01.07.2018 is 1095 days		1106 – 1095 = 11 days	

20. Thus the suit is clearly barred by limitation in view of Order 7 Rule 11 as it was filed after 12 days of expiry of the period of limitation.

21. This court has taken note of the arguments advanced by Mr. Goswami, the learned counsel for the respondent/plaintiff and also gone through the decision referred by him. But, in the given facts and circumstances on the record, this court is unable to agree with Mr. Goswami and the decision in **Jiwanlal Achariya (supra)** referred by him also would not advance his case, in as much as the same was taken into account by Hon'ble Supreme Court in the case of **Shanti Conductors (P) Ltd. (supra)** and held in para No.20 as under:-

“20. The judgment of this Court in *Jiwanlal Achariya vs. Rameshwarlal Agarwalla*, AIR 1967 SC 1118 does not lay down that even without pleading all facts for claiming start of fresh period of limitation, the plaintiff is entitled for the benefit of Section 19...”

22. In the case of ***Dahiben v. Arvindbhai Kalyanji Bhanusali***, reported in ***2020 SCC Online SC 562***, it has clarified that the power of the courts under O VII R 11 are mandatory in nature and may be exercised at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial. However, it has also clarified that the power conferred under O VII R 11 is a drastic one and that the requirements enumerated therein should be strictly adhered to.

23. In the result this court finds sufficient merit in this petition and accordingly the same stands allowed. The impugned order dated 05.03.2024, so passed by the learned Civil Judge, (Senior Division) No.2 Kamrup (M) at Guwahati in Commercial Suit No. 135/2023, stands set aside and quashed as the same failed to withstand legal scrutiny. Consequently, the plaint stands **rejected**. The parties have to bear their own cost.

JUDGE

Comparing Assistant