

A M/S MONGIA REALTY AND BUILDWELL PRIVATE LIMITED

v.

MANIK SETHI

(Civil Appeal No. 814 of 2022)

B

JANUARY 31, 2022

**[DR DHANANJAYA Y CHANDRACHUD AND
SURYA KANT, JJ.]**

Limitation Act, 1963 – Issue of Limitation – Preliminary issue
C *– Disputed question of facts – The case of the appellant was that the respondent had requested appellant to grant a business loan from time to time and the request was acceded – Respondent partly discharged the liability, however, failed to pay outstanding amount – The appellant instituted a suit for recovery against the respondent– The respondent filed written statement – The respondent denied that*
D *there were any loan transactions, and on the contrary, set up the plea that the transactions between the parties pertain to the payment of commission by the appellant to the respondent in connection with real estate transactions – An application u/Or. 7 r.11 of the CPC was also filed by the respondent or the rejection of the plea on the*
E *ground that the suit was barred by limitation – Pursuant to which, the trial Court framed a preliminary issue on whether the suit was barred by limitation – The trial Court held that the last payment was made on 20.06.2013 by the appellant and since the suit was instituted on 01.04.2017, three years nine months and ten days there after, it is barred by limitation – High Court dismissed the appeal filed by*
F *the appellant against the order passed by the trial court – On appeal, held: The appellant has specifically set up a plea in the plaint that the loans were to be repaid within one year from the date of the payment of the last installment – The case of the appellant has to be proved on the basis of evidence adduced in the suit – Such an issue*
G *could not have been decided purely on the basis of oral arguments urged on behalf of the contesting parties – The trial Judge had heard the preliminary issue only on the basis of the arguments at the Bar – There are two conflicting versions on the nature of the business transactions between the parties – The issue of limitation in the instant case would require evidence to be adduced – Since*
H *the determination of the issue of limitation in this case is not a pure*

question of law, it cannot be decided as preliminary issue u/Or.XIV r.2 – The issue of limitation which was framed by the trial Judge may be decided, along with other issues at trial – Therefore, the judgment of the trial Judge and the Single Judge of the High Court are set aside – Code of Civil Procedure, 1908 – Or.XIV r.2.

Allowing the appeal, the Court

HELD: 1. The appellant has specifically set up a plea in the complaint that the loans were to be repaid within one year from the date of payment of the last installment. The case of the appellant has to be proved on the basis of evidence adduced in the suit. Such an issue could not have been decided purely on the basis of oral arguments urged on behalf of the contesting parties. The respondent has denied the existence of loan transactions and has set up the plea that the payments made by the appellant were on account of commission. There are two conflicting versions on the nature of the business transactions between the parties, the appellant alleging that it was a loan, while the respondent alleges that it was in the nature of a commission for real estate services. The issue as to whether the claim of the appellant is barred by limitation cannot be isolated from the nature of the transactions between the parties. In any event, whether the plea of the appellant as set up in the complaint is proved would depend upon evidence adduced at the trial. The course of action which was followed by the trial Judge of directing the parties to address arguments on the issue of limitation was irregular. The issue of limitation in the present case would require evidence to be adduced. Since the determination of the issue of limitation in this case is not a pure question of law, it cannot be decided as preliminary issue under Order XIV Rule 2 of the CPC. Hence, this Court allow the appeal and set aside the judgment of the trial Judge dated 16 August 2018 and of the Single Judge of the High Court dated 4th September 2019. The issue of limitation which has been framed by the learned trial Judge may be decided, along with other issues at trial. [Paras 11, 12 & 15][1003-D-G; 1005-D-F]

Nusli Neville Wadia v. Ivory Properties (2020) 6 SCC 557: [2019] 15 SCR 795 - relied on.

H

A

Case Law Reference**[2019] 15 SCR 795****relied on****Para 14**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 814 of 2022.

B

From the Judgment and Order dated 04.09.2019 of the High Court of Delhi at New Delhi in RFA No.5 of 2019.

Uday Gupta, Ms. Shivani M. Lal, Dhanesh Relan, M. K. Tripathi, Harish Dasan, Rajiv Ranjan, Paritosh Dhawan, Hiren Dasan, Advs. for the Appellant.

C

Sanjay Sehgal, Avinash Sharma, Advs. for the Respondent.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

D

2. This appeal arises from a judgment of a Single Judge of the High Court of Delhi in RFA No 5 of 2019. The trial Court dismissed the suit instituted by the appellant on the ground of limitation, by a judgment dated 16 August 2018. The High Court upheld the dismissal of the suit on that ground.

E

3. The appellant instituted a suit against the respondent on 31 March 2017 (Civil Suit No 76 of 2017 (new number 355 of 2017)) under Order 37 of the Code of Civil Procedure 1908¹ for the recovery of an amount of Rs 1,11,63,633 together with interest at the rate of 18% per annum from the date of the institution of the suit till the realization of the full amount. The respondent filed a written statement on 24 May 2017.

F

An application was filed under Order 7 Rule 11 of the CPC for the rejection of the plaint on the ground that the suit was barred by limitation. On 4 January 2018, the trial Court framed a preliminary issue on whether the suit was barred by limitation. On 15 March 2018, the appellant was granted an opportunity to file its replication and the suit was adjourned to

G

26 April 2018 for addressing arguments on the preliminary issue. The appellant filed its replication on 20 April 2018. On 26 April 2018 and 23 May 2018, an adjournment was granted by the trial Court. On 26 July 2018, the trial Court rejected a plea for an adjournment made by the

H

¹ “CPC”

appellant. Oral arguments were heard on behalf of the respondent and the appellant was granted fifteen days' time to file written arguments. The appellant failed to file the written arguments before 10 August 2018. On 16 August 2018, the trial Court declined to grant any further time and by its judgment decided the issue of limitation against the appellant. The appellant carried the matter in appeal in RFA No 5 of 2019. The Single Judge of the High Court dismissed the appeal by the impugned judgment dated 4 September 2019.

4. The case of the appellant is that the respondent had requested the appellant to grant a business loan from time to time, and the request was acceded to by the appellant. The loans were stated to be repayable with interest at the rate of 18% per annum. The appellant claims to have advanced an amount of Rs 10 lakhs on 13 June 2012, 18 lakhs on 11 July 2012 and Rs 15 lakhs on 21 December 2012 by cheques drawn on Axis Bank, and a further amount of Rs 39 lakhs. The case of the appellant is that the respondent partly discharged his liability and that he is entitled to a decree for the balance in the amount of Rs. 1,11,63,633 along with an interest at 18% per annum. Paragraph 5 of the plaint contains the following averments:

“The aforesaid loans have been given by the plaintiff to the defendant always with an understanding that aforesaid loans shall be returned along with interest @ 18% p.a. That the aforesaid loans were repayable within one year from the date of payment of the last instalment of the loan i.e. latest by 9th of April, 2014. However, the defendant was to pay interest on the aforesaid loan amounts on half yearly basis @ 18% p.a. to the plaintiff.”

5. In paragraph 10 of the plaint, it has been pleaded that though two and a half years had elapsed since the date for repayment of the loan, the respondent had failed to pay the outstanding amount. The appellant has also set up the case that a running account has been maintained between the parties in pursuance of which, the last payment was made on 24 October 2013.

6. The defense in the written statement filed by the respondent is that the respondent provided real estate services to the appellant for which commission was being paid by the appellant. It was alleged that payments made for business transactions are in a malafide manner portrayed as loan transactions. On some occasions, it is alleged, payments were made for carrying out renovation work in the properties. The

A respondent has denied that there were any loan transactions, and on the contrary, set up the plea that the transactions between the parties pertain to the payment of commission by the appellant to the respondent in connection with real estate transactions.

B 7. On the preliminary issue framed on the question of limitation, no evidence was adduced by the respondent. The trial Judge heard the preliminary issue only on the basis of arguments at the Bar, noting that the appellant had failed to file written arguments. The trial Judge held that the admission in paragraph 10 of the plaint is that the last payment was made on 20 June 2013 by the appellant and since the suit was instituted on 1 April 2017, three years nine months and ten days thereafter, it is barred by limitation.

D 8. In appeal, the High Court has also held that since the last payment was made on 24 October 2013 in the amount of Rs 3 lakhs, the suit which was instituted on 31 March 2017 was beyond three years of the last repayment. While dealing with the averment in paragraph 5 of the plaint, which has been extracted above, the High Court has held that since the appellant is a company, “it is not expected of a company to have oral mutual understandings with its customers”. Noting that there is no written agreement to the effect that the loan would be repayable within one year from the date of payment of the last installment, the High Court held that it would be difficult to hold that such a condition formed part of the contract between the parties. Finally, the Single Judge of the High Court took the view that accepting the case of the appellant would lead to a wrong precedent since it would then be open to the plaintiff to take a plea that a loan given in 2000 was orally agreed to be paid in 2019 and hence a suit filed in 2020 is within limitation.

F 9. Two submissions have been urged on behalf of the appellant by Mr Udai Gupta, learned counsel. Firstly, it has been submitted that the averments in paragraph 5 of the plaint set up an express plea to the effect that the loan was repayable within one year from the date of the payment of the last installment that is, by 9 April 2014. Hence, the suit which was instituted on 31 March 2017 is within limitation. On this limb of the submission, it has been urged that in any event, this is a matter which has to be tried on the basis of evidence and could not have been disposed of purely on the basis of oral arguments. Secondly, it has been submitted that the contention that there was an open and running current account between the parties having been set up in the plaint, it has to be decided on the basis of evidence adduced at the trial.

10. Opposing these submissions, Mr Sanjay Sehgal, learned counsel appearing on behalf of the respondent submitted that (i) there is admittedly no written agreement between the parties evidencing the terms of an alleged loan transaction; (ii) there was no loan transaction at all and the payments which were made by the appellant to the respondent were on account of commission towards real estate transactions; (iii) the last payment having been made on 24 October 2013, the suit which was instituted on 31 March 2017 is barred by limitation; (iv) Article 1 of the Limitation Act has no application whatsoever since there was no open, running and mutual current account envisaging mutual payments and receipts between the parties; and (v) this is evident from the averments contained in paragraph 3 of the plaint where the appellant has set up the plea that it was only the appellant who was making payments to the respondent.

11. The appellant has specifically set up a plea in paragraph 5 of the plaint that the loans were to be repaid within one year from the date of the payment of the last installment. The case of the appellant has to be proved on the basis of evidence adduced in the suit. Such an issue could not have been decided purely on the basis of oral arguments urged on behalf of the contesting parties. The respondent has denied the existence of loan transactions and has set up the plea that the payments made by the appellant were on account of commission. There are two conflicting versions on the nature of the business transactions between the parties, the appellant alleging that it was a loan, while the respondent alleges that it was in the nature of a commission for real estate services.

12. The issue as to whether the claim of the appellant is barred by limitation cannot be isolated from the nature of the transactions between the parties. In any event, whether the plea of the appellant as set up in paragraph 5 of the plaint is proved would depend upon evidence adduced at the trial. The course of action which was followed by the learned trial Judge of directing the parties to address arguments on the issue of limitation was irregular. The issue of limitation in the present case would require evidence to be adduced.

13. Order XIV Rule 2 of the CPC stipulates that when issues of both law and facts arise in the same suit, the Court may dispose the suit by trying the issue of law first. For this purpose, the provision specifies

A two questions of law, which are (i) jurisdiction of the Court; and (ii) a bar to the suit created by any law for the time being in force. The provision is extracted below:

2. **Court to pronounce judgment on all issues.**—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. (2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—
- (a) the jurisdiction of the Court, or
- (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]
- D

14. Before this Court in **Nusli Neville Wadia v. Ivory Properties**², the issue was whether the issue of limitation can be determined as a preliminary issue under Order XIV Rule 2. The three-judge bench of this court observed that if the issue of limitation is based on an admitted fact, it can be decided as a preliminary issue under Order XIV Rule(2)(b). However, if the facts surrounding the issue of limitation are disputed, it cannot be decided as a preliminary issue. This Court observed as follows:

E

51. [...] As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court
- F
- G

H ² (2020) 6 SCC 557

may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act. A

52. In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976. B C D

15. Since the determination of the issue of limitation in this case is not a pure question of law, it cannot be decided as preliminary issue under Order XIV Rule 2 of the CPC. Hence, we allow the appeal and set aside the judgment of the trial Judge dated 16 August 2018 and of the Single Judge of the High Court dated 4 September 2019. The issue of limitation which has been framed by the learned trial Judge may be decided, along with other issues at trial. The appeal shall stand allowed in the above terms. E

16. Pending applications, if any, stand disposed of. F