

Spl.C.S. NO. 01/2018

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, PALGHAR

Shri Hareshwar Shridhar Patil

... Plaintiff

Vs.

Shri Sudhir Ganpat Bhandari and others

... Defendants

Objection under Order VII Rule
11(a) and (d) of the Code of Civil
Procedure to reject the plaint.

Ld. advocate Shri. A. B. Patil for plaintiff

Ld. advocate Shri. D. N. Bothra for defendants.

ORDER BELOW EXH. 01

1] Perused plaint. Heard learned advocates for the parties at length.

2] Defendants have filed application cum objection at Exh.11 contending that plaint does not disclose a cause of action and suit appears from the statement in the plaint to be barred by law of limitation, therefore, plaint is liable to reject invoking Order VII Rule 11(a) and (d) of the Code.

Substance of objection :

3] Suit is filed for recovery of money which according to plaintiff lent by him to defendants on 23/05/2013, 04/09/2013, 08/10/2013, 11/11/2013 and 29/11/2013. The period of limitation for institution of the suit came to an end on the expiration of the period of three years from the respective dates of alleged loans. The present suit is filed on 09/01/2018. Therefore, the suit appears from the statement in the plaint barred by law of limitation under Article 19 of the Limitation Act, 1963. Further the plaint does not disclose a cause of action. Hence, the objection to reject the plaint under Order VII Rule 11(a) and (d) of the Code.

4] The plaintiff resisted this objection by filing his say at Exh.17. The objection is illegal and not maintainable in eye of law. The cause of action arose to file suit on 20/07/2017 and it continued and this fact is pleaded in the suit. Suit is well within limitation and not barred by law of limitation. As pleaded in the suit, the plaintiff has lent total amount of Rs.6,35,000/- to defendant by cheque and cash in presence of witnesses. But defendant no. 1 deceived him and filed false police complaint against him on 20/07/2017. After filing said false police complaint the cause of action arose to file suit. The point of limitation is mixed question of facts and law. This objection is filed with intend to prolong the matter. With this say, he prayed to reject the application.

5] Considering the nature of objection, following points arose for determination and I have recorded findings thereon for the reasons as follows.

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Whether plaint does not disclose a cause of action ?	Plaint disclose a cause of action.
2]	Whether the suit appears from the statement in the plaint to be barred by law of limitation ?	Yes.
3]	What order ?	Plaint is rejected.

REASONS

AS TO POINT NO.1 :

6] The words 'a cause of action' means bundle of facts and any cause of action. If the plaint disclose a cause of action even in part, it cannot be rejected accepting it does not disclose a cause of action. A plea that there was no cause of action for the suit is different from the plea that the plaint does not disclose a cause of action. It is settled principle of law that for determining whether the plaint discloses any cause of action or not, the Court has to see only the averments in the plaint. Further the plaint must be read as whole.

7] On perusal of plaint it seems that plaintiff has pleaded that he has lent total amount of Rs.6,35,000/- to defendants by cheque and cash as per following particulars :

<u>SR. NO.</u>	<u>DATE</u>	<u>AMOUNT</u>
1	23/05/2013	Rs.1,00,000/-
2	04/09/2013	Rs.3,00,000/-
3	08/10/2013	Rs.1,00,000/-
4	11/11/2013	Rs.1,00,000/-
5	29/11/2013	Rs. 35,000/-
TOTAL		Rs.6,35,000/-

8] It is specifically pleaded by the plaintiff in the plaint that till filing the suit the defendants have not repaid the above mentioned amounts to him. On the contrary on 20/07/2017 defendant no. 1 filed a false police complaint/case against him. Therefore, plaintiff is constrained to file the suit for recovery of said amount with future interest. What is starting point of limitation and whether suit is time barred or not, is a different aspect than whether or not plaint disclose, a cause of action. It is true that no any particular date of cause of action is mentioned, but it is specifically pleaded by the plaintiff that till filing of the suit the defendants have not repaid the loan amounts. This pleading definitely disclose a cause of action. Hence, I answer point no. 1 accordingly.

AS TO POINT NO.2 :

9] On this point the Ld. advocate for defendants submitted his arguments mostly as per objection vide Exh.11. He drew my attention towards the averments made in the plaint and Article 19 of the Limitation Act, 1963 and submitted that as per averments in plaint, in the year 2013 plaintiff has lent total amount of

Rs.6,35,000/- to defendants as friendly loan on 23/05/2013, 04/09/2013, 08/10/2013, 11/11/2013 and 29/11/2013. The alleged friendly loan is not lent on the basis of an agreement or promissory note fixing a certain date for repayment. Therefore, the general Article 19 of the Limitation Act is applicable to see whether suit is filed within limitation or not. By this Article, period of three years limitation is prescribed to file a suit for recovery of money payable for money lent and this period begins to run from the date when the loan is made. As per plaint the alleged loans are made in the year 2013, but suit is filed on 09/01/2018 i.e. after four years from the dates when the loans are made. Therefore, suit is barred by limitation. Hence, plaint is liable to be reject Under Order VII Rule 11(d) of the Code. In support of his arguments he relied upon decision in In support of his arguments he relief upon decision in the case of **Mortulo Ramchandra Gad Vs John Pinto 2006(5) Bom. C.R. 522** wherein the Honourable Bombay High Court (Panaji Bench) held that,

Suit filed on 04/01/1996 – Contention, that amount was repayable “as and when demanded”. Demand for first time was made on 01/11/1994 and since then within 3 years suit filed – Held, suit document itself does not show that either document can be construed as promissory note or there is any specification that amount was to be repaid on demand in any manner whatsoever. Transaction is nothing less or more than a friendly loan. Suit transaction is entirely covered under Article 19 of Limitation Act.

10] Per contra the Ld. advocate for plaintiff submitted the arguments mostly as per averments made in plaint and say to present objection. He submitted that suit is well within time. The point cum issue of limitation is mixed question of facts and law, therefore, it required to be decided on merit after evidence of parties. Therefore, plaint cant be rejected merely on the basis of objection of defendants. In support of his arguments he relied upon decision in

(i) Sureshchandra Nadkarni Vs. Dattu Nadkarni 2007(1) Bom C.R. 498 wherein the Honourable Bombay High Court (Panaji Bench) held that, 'Rejection of plaint based on application under Order VII Rule 11 without adducing evidence and cause of action not proper.'

(ii) M/s. Maheshwari Builders Vs. Dr. Mohd. Shafiuddin 2008(5) ALD 806 wherein the Honourable Andhra Pradesh High Court held that, 'The petition for rejection of plaint out right under the proviso on ground of limitation cannot be allowed treating the questions of fraud and misrepresentation raised in the plaint as mere questions of law without considering the evidence on them, since it is mixed question of fact and law.'

(iii) Pramod Kumar Vs. Saiyad Sultan [2015(4) Civil LJ 190] wherein the Honourable Madhya Pradesh High Court held that, 'Issue of limitation is a mixed question of

fact and law which can be decided only after framing issues and recording evidence.'

(iv) Popat and Kotecha Property Vs. State Bank of India 2005(7) SCC 510, wherein the Honourable Supreme Court held that, 'The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order VII Rule 11 of the Code.'

11] It is settled principle of law that while deciding objection for rejection of plaint, the Court has to consider only the averments in the plaint and not defence of defendant. Further as per ratio laid down by the Honourable Supreme Court in Popat and Kotecha Property's case cited Supra, to reject plaint for invoking Order VII Rule 11 of the Code the statement in the plaint without addition or subtraction must show that it is barred by any law.

12] I have carefully gone through the averments made in the plaint and the above cited case laws. Defendant no. 1 and 2 are husband and wife. Defendant no. 3 is their daughter. According to plaintiff there was family relation between him and defendants. Therefore, he used to give money on oral demand to defendants. Plaintiff has pleaded that he has lent total amount of Rs.6,35,000/- to defendants by cheque and cash from time to time as particulars given below.

<u>SR. NO.</u>	<u>DATE</u>	<u>AMOUNT</u>
1	23/05/2013	Rs.1,00,000/-
2	04/09/2013	Rs.3,00,000/-
3	08/10/2013	Rs.1,00,000/-
4	11/11/2013	Rs.1,00,000/-
5	29/11/2013	Rs. 35,000/-
TOTAL		Rs.6,35,000/-

13] The plaintiff has averred in his plaint that the above amounts were advanced by him to defendants as hand loan. Thus, it is clear that there is no any agreement or promissory note fixing a certain date for repayment or loan is payable back to plaintiff as and when demanded. In these circumstances, the alleged money transaction between the parties is a friendly loan advanced on the above mentioned respective dates. Therefore, the suit transactions are entirely covered under general Article 19 of the Limitation Act to see whether suit is within limitation or not. In view of this Article there is three years limitation to file a suit for recovery of money payable for money lent and this period begins to run from the date when the loan is made. Even where there is express agreement that loan shall be payable on demand, the time runs from the date of the loan and the words “on demand” in Article 21 of the Act not being regarded as a term of contract to pay.

14] When question as to starting point of limitation is disputed question of fact, in that circumstance the issue of limitation can be gone into trial. It is clearly and specifically pleaded by the plaintiffs in paragraph no. 04 of the plaint that the plaintiff had lent

the total amount of Rs.6,35,000/- on various dates in the year 2013. Thereafter, he has filed the present suit for recovery of money on 09/01/2018 i.e. after 4 years from lending last amount to defendant. As such, suit filed beyond the period of 3 years, hence, barred by the law of limitation. Therefore, it cannot be accepted that in the present matter, the starting point of limitation is disputed fact or question. In these circumstances, the observations in Sureshchandra Nadkarni's case, in M/s. Maheshwari Builders's case and that in Pramod Kumar's case cited Supra that 'Issue of limitation is a mixed question of fact and law which can be decided only after framing issues and recording evidence' is not applicable to the case in hand.

15] The frame of the suit shows that the same is filed for recovery of money lend on oral demand. Plaintiff pleaded that cause of action aroused lastly on 20/07/2017 when defendant no. 1 filed police complaint against him. But in view of the above discussions it appears that this cause of action dated 20/07/2017 being pleaded with a view to bring the suit within limitation. As discussed above, it is clearly and specifically pleaded in plaint that the plaintiff had lent the total amount of Rs.6,35,000/- on various dates in the year 2013. Thereafter, he has filed the present suit for recovery of money on 9/01/2018 i.e. after 4 years from lending last amount to defendants. Without addition or subtraction, the statement in the plaint itself show that it is barred by law of limitation and therefore, in present case Order VII Rule 11(d) is perfectly attracted. As discussed above, suit is absolutely time barred. Hence, point no. 2 is answered in the affirmative.

AS TO POINT NO.3 :

16] In Popat and Kotecha's case cited Supra the Honourable Supreme Court ruled out 'the word "Shall" under Order VII Rule 11 clearly indicates that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant.' Hence, where from the statement in the plaint the suit appears to have been instituted after the prescribed period of limitation, it is duty of the Court to reject the plaint. In view of the affirmative finding to point no. 2, it is held that the suit appears from the statement in the plaint is barred by law of limitation, therefore, it is liable to reject invoking Order VII Rule 11(d) of the Code. Hence, the following order.

ORDER

- 1] Plaint stands rejected with costs under Order VII Rule 11(d) of the Code of Civil Procedure, as it is barred by law of limitation.
- 2] Decree be drawn up accordingly.

Palghar
Date : 31/12/2018

(Atul A. Chendke)
Civil Judge S.D. Palghar.