HIGH Court OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil First Appeal No. 275/2022

CNR: RJHC020402692022 | URN: CFA / 501U / 2022

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N.L. Engineers Private Limited, Registered Office Plot N. C-114, Industrial Area, Phase-7, S.A.S. Nagar, Mohali, Punjab Through Director Vijaykant Agrawal.

----Appellant/Plaintiff

Versus

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Office At Vidyut Bhawan, Janpath, Jaipur (Raj.) Through Its Chairman Cum Managing Director.
2. Superintending Engineer (TLPC), Rajasthan Rajya Vidyut Prasaran Nigam Limited, M.M. Building, Old Power House, Premises, Near Ram Mandir, Banipark, Jaipur. (Raj.).
3. State Of Rajasthan, Through Principal Secretary, Government Secretariat, Jaipur Metropolitan, Jaipur (Raj.).

----Respondents/Defendants

For Appellant(s) : Mr. Jai Prakash Gupta, Adv.
For Respondent(s) : Mr. L.L. Gupta, Adv. with
Mr. Lakshaya Sharma, Adv. &
Ms. Pratibha Sharma, Adv.

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR
Order(Oral)

Reportable

04/08/2026

Per: Arun Monga, J.

1. Appellant herein, *inter alia*, seeks quashing of the judgment and decree dated 27.10.2021 passed by the learned Commercial Court No.3, Jaipur Metropolitan-II, Jaipur whereby, the suit filed by the appellant-plaintiff for recovery of Rs.77,57,272/-, along with interest, was rejected at the threshold under Order VII Rule 11 of the Code of Civil Procedure, 1908 on the grounds of non-maintainability and limitation.

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2. The appellant–plaintiff instituted a civil suit for recovery of Rs. 77,57,272/-, comprising two principal amounts of Rs. 19,50,993/- and Rs. 11,48,370/-, together with interest calculated at 21.75% per annum up to the date of institution of the suit. The claim arose out of an agreement/work order executed between the parties for the supply of galvanized steel structures for 220 KV and 132 KV Grid Sub-Stations, along with G.I. nuts, bolts, springs, washers and other allied materials. Under the terms of the work order, the supplies were to be made in three phases: 40% of the material within four months of the purchase order, the next 30% between the fifth and seventh months, and the remaining 30% between the eighth and tenth months.

2.1 The plaintiff supplied the first tranche of 40% of the material, which was accepted by the defendants up to 30.03.2014. However, payment was not released within the agreed period. During the subsistence of the contract, the State Government enhanced the rate of entry tax from 4% to 14% vide notification dated 14.07.2014, which rate was subsequently reduced. The plaintiff alleged that despite the entire material having been supplied prior to 20.08.2014, the defendants unlawfully deducted Rs. 19,50,993/- towards the enhanced entry tax and a further sum of Rs. 11,48,370/- towards delayed supply. On these premises, the plaintiff sought recovery of the deducted amounts along with interest.

2.2 Before instituting the suit in question, the plaintiff had raised its grievance before the Centralized Standing Committee for settlement of disputes, which rejected the claim vide order dated 08.07.2016. The plaintiff challenged that decision in S.B. Civil Writ Petition No. 2958/2017, which was dismissed on 04.05.2017. The further challenge in D.B. Special Appeal (Writ) No. 1151/2018 was dismissed as

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withdrawn on 20.09.2018, with liberty to the plaintiff to avail its remedy before the competent Civil Court.

2.3 Upon institution of the suit, respondent Nos. 1 and 2 filed a written statement raising preliminary objections to the maintainability of the suit, relying upon the orders passed in the earlier writ proceedings. The learned trial Court framed and decided the issue of maintainability, invoking Order VII Rule 11 CPC, and by judgment and decree dated 27.10.2021 dismissed the suit. The plaintiff's review petition under Order XLVII Rule 1 read with Section 151 CPC was dismissed vide order dated 20.04.2022, the trial Court holding that no error apparent on the face of the record was made out.

2.4 Hence, the instant appeal.

3. Learned counsel for the appellant argues that the learned trial Court committed serious illegality and material irregularity in passing the impugned judgment and decree dated 27.10.2021, particularly in holding that the suit was barred by the principle of *res judicata*. He contended that the question of *res judicata* involves determination of facts and could not have been decided without evidence, particularly when the defendants had not placed on record the writ petition or its reply, nor did the trial Court compare the pleadings and reliefs sought in the writ petition with those in the present suit. He further argued that an order passed by the High Court in writ jurisdiction, in exercise of its extraordinary jurisdiction and without recording evidence, could not, in the facts of the present case, operate as *res judicata* in a subsequent civil suit. Thus, the finding on point of determination No. 1 was perverse and liable to be set aside.

3.1 He further contended that the learned trial Court, without there being any application under Order VII Rule 11 CPC, *suo motu* proceeded

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to examine the maintainability of the suit and rejected the same, which was legally impermissible. He argued that while considering rejection of a plaint under Order VII Rule 11 CPC, only the averments contained in the plaint are required to be examined and the defence or the documents relied upon by the defendants cannot be taken into consideration. However, the learned trial Court relied upon the written statement while deciding the issue of maintainability, thereby committing a grave error of law. He submitted that the finding on this aspect, therefore, could not be sustained.

3.2 Learned counsel further argued that the finding on limitation was also erroneous, as the question of limitation, in the facts of the present case, involved a mixed question of law and fact. While the plaintiff pleaded that the cause of action accrued on 10.02.2019, the defendants asserted that it arose on 20.09.2014 or 08.07.2016, when the Standing Committee rejected the plaintiff's claim. He contended that such a disputed question could not have been conclusively determined without evidence, and even while considering Order VII Rule 11 CPC, the Court was required to examine the plaint averments alone. He further submitted that the trial Court had committed an additional error in applying Order II Rule 2 CPC, despite there being no specific point of determination in that regard, and its findings under Order II Rule 2 and *res judicata* were mutually contradictory. If the claim stood adjudicated so as to attract *res judicata*, the same could not simultaneously be held barred under Order II Rule 2 on the ground that it had not been claimed in the earlier writ proceedings.

4. We have heard learned counsel for the appellant and perused the case file.

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5. At the outset, we may observe that although the impugned order rests on reasoning relating to both limitation and *res judicata*, our discussion in the later part of this judgment will show that the issue of *res judicata* could not have been adjudicated within the limited jurisdiction available under Order VII Rule 11 CPC. Accordingly, we confine our discussion, at the first instance, to the issue of limitation alone. In our view, if the appellant succeeds on the question of limitation, the issue of *res judicata* would, in any event, be rendered largely academic.

6. Being mindful of the aforesaid, let us now have a look at the impugned order.

7. Relevant extract of the impugned order is translated as under:-

> ***"Issue No. 2 :-***
>
> *11. Under this issue, the defendants were required to prove whether the suit filed by the plaintiff is barred by limitation and is, therefore, not maintainable.*
>
> *In light of the submissions advanced by the parties on this issue, the record has been perused. Even from the averments contained in the plaint, it appears that the plaintiff has principally pleaded that the material was supplied to the defendants within the stipulated period and that payment for the said material was required to be made by the defendants to the plaintiff within 30 days. It is admitted in the pleadings that the material was supplied to the defendants on 20.08.2014. Thus, upon non-receipt of payment by 20.09.2014, the cause of action accrued to the plaintiff. Even if, for the sake of argument, this fact is ignored and it is assumed that the plaintiff referred the matter to the Centralized Standing Committee, which rejected the claim by its order dated 08.07.2016, then also, if the commencement of the three-year limitation period is taken from the date of the order dated 08.07.2016 instead of September 2014, the present suit, having been filed on 07.09.2019, was filed after expiry of the period of three years. It is also relevant that the Division Bench disposed of D.B. Special Appeal No.1151/2018 on 20.09.2018. Even thereafter, the plaintiff did not institute the suit until September 2019. Thus, it is clearly apparent that the suit filed by the plaintiff is barred by the provisions of the Limitation Act.*
>
> *12. At this stage, another aspect is also significant. In paragraph 6 of the plaint, the plaintiff has also challenged the deduction of Rs.11,48,370/- made by the defendants on account of delayed delivery of the material and has sought recovery of the said amount together with interest at the rate of 21.75%, which was calculated at Rs.17,22,376/-, making a total claim of Rs.28,70,746/- (Rs.11,48,370/- + Rs.17,22,376/-).*

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It is noteworthy that the plaintiff has claimed the aforesaid amount for the first time through the present suit, which was instituted on 07.09.2019. The plaintiff has not made any averment that any claim in respect of the said amount was also raised before the Centralized Standing Committee. From a perusal of the judgments/orders passed in the writ petition and appeal before the Hon'ble High Court, it also does not appear that the plaintiff had sought any relief in respect of the said amount before the Hon'ble High Court.

x-x-x-x-x-x-x-x

13. In the humble opinion of the Court, since the plaintiff had not earlier sought any relief regarding deduction of Rs.11,48,370/- or recovery thereof, together with interest on the said amount, the plaintiff is barred from claiming such relief in the present suit by virtue of Order II Rule 2 CPC. The provisions of the Limitation Act are also attracted in respect of the amount of Rs.11,48,370/-. Admittedly, the plaintiff had supplied the material on 20.08.2014 and, upon non-receipt of payment within the agreed period of one month, the cause of action first accrued to the plaintiff in September 2014. Even if the matter is considered from a liberal perspective, a period of three years would necessarily have commenced, at the latest, from the order dated 08.07.2016 passed by the Centralized Standing Committee. However, since the suit was not instituted within the said period, the plaintiff is also barred by limitation from claiming the aforesaid relief.

14. Finally, it would be appropriate to observe that the facts relating to limitation are required to be specifically pleaded, and the party must explain in its pleadings how its claim has been instituted within the period prescribed under the Limitation Act. In this regard, the provisions of Order VII Rule 6 CPC are attracted, which provide that where a suit is instituted after expiry of the prescribed period of limitation, the plaint shall set forth the grounds upon which exemption from the operation of the law of limitation is claimed."

Based on above reasoning, the learned Commercial Court held that the suit was barred by limitation, though, of course, it also opined that even by virtue of Order II Rule 2 CPC, the part of the relief sought by the plaintiff was available to it at the time of preferring writ petition and, therefore, having not raised the issue at the relevant time, it was hit by the principles of *res judicata*.

8. The legal proposition urged by learned counsel for the appellant is that the learned Commercial Court ought not to have dismissed the suit *suo motu* under Order VII Rule 11 CPC, since the bar of *res judicata* Order II Rule 2 CPC is distinct from the bar contemplated under Order VII Rule 11 CPC. In support of this proposition, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in ***Keshav Sood***

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v. Kirti Pradeep Sood & Ors[1]., the relevant extract of which reads as under:

> "*5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.*
>
> *6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits."*

9. We are though in agreement with the proposition of law canvassed by the learned counsel for the appellant, however, we are unable to be persuaded that the proposition applies to the facts of the present case.

10. A reading of the impugned order shows that the reference therein to Order VII Rule 11 CPC has been misunderstood by learned counsel for the appellant. Said reference occurs in the context of the second issue framed by the trial Court, which pertained to limitation.

11. The suit was *ex facie* barred by limitation on the plaint averments alone. The plaint itself admits that the entire material stood supplied by 20.08.2014 and that payment was contractually due within 30 days. The cause of action for recovery of the deducted amounts therefore first accrued in September 2014. Since limitation was apparent from the plaintiff's own pleadings, no evidence was required. Where the bar of limitation appears on the face of the plaint, rejection under Order VII Rule 11(d) CPC is permissible. The Court can act *suo motu* since the provision casts a duty on the court itself, independent of any application by the defendant.

12. Even on the most liberal computation, the suit was time-barred. Assuming the pursuit of remedy before the Centralized Standing

[1]2023 SCC OnLine SC 2459

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RAJASTHAN HIGH COURT

Committee deferred the accrual, limitation would run at the latest from 08.07.2016, when the Committee rejected the claim. The three-year period under Articles 18/55/113 of the Limitation Act expired on 08.07.2019, whereas the suit was instituted on 07.09.2019. The trial Court thus gave the plaintiff the benefit of the most favourable starting point and the suit was still beyond time.

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13. Time spent in writ proceedings does not extend limitation. The writ petition was dismissed on 04.05.2017 and the special appeal was withdrawn on 20.09.2018. Section 14 of the Limitation Act offers no refuge, because even after withdrawal of the special appeal with liberty on 20.09.2018, the plaintiff waited nearly a year before suing. Mere grant of liberty to approach the civil court does not create a fresh cause of action or a fresh period of limitation.

14. ***Keshav Sood (*supra**)** is distinguishable and does not advance the case of the appellant. The operative foundation of the decree is limitation, which, unlike *res judicata*, can be decided under Order VII Rule 11(d) where the bar appears from the plaint itself.

15. In view of the foregoing discussion, we find no ground to interfere with the impugned judgment and decree dated 27.10.2021. The present appeal, being devoid of merit, is accordingly dismissed.

16. Any pending application(s) also stands disposed of.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

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