$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 23.07.2026
Date of Decision:24.08.2026

\# **CNR No. DLHC010368222019**

\+ CM(M) 1345/2019 &CM APPL. 40567/2019
AMIT GUPTA .....Petitioner
Through: Mr. S. S. Jauhar, Advocate (Through VC)

versus

SANDEEP GUPTA .....Respondent
Through: Ms. Gayatri Verma and Mr. Kanishka, Advocates.

\# **CNR No. DLHC010368232019**

\+ CM(M) 1346/2019 &CM APPL. 40632/2019
AMIT GUPTA .....Petitioner
Through: Mr. S. S. Jauhar, Advocate (Through VC)

versus

KRISHNA GUPTA .....Respondent
Through: Ms. Gayatri Verma and Mr. Kanishka, Advocates.

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

<u>J U D G M E N T</u>

%

1. The captioned petitions filed under Article 227 of the Constitution of India, are being taken up together on account of the same legal and factual matrix. For the sake of convenience, CM(M) 1345/2019 is being treated as the lead matter, and CM(M) 1346/2019 shall stand disposed of accordingly. The petitioner in both these petitions is the defendant in the underlying civil suits, and has assailed order dated 04.07.2019 passed by the learned Additional District Judge, South East, Saket Courts, New Delhi[1] in CS no. 1854/17 and CS no. 1853/17 respectively.

2. The learned Trial Court *vide* the impugned order dismissed the application filed by the petitioner under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908[2].

3. At the outset, it is appropriate to refer to the factual background of the case.

4. The present petitioner and the respondent had friendly relations. On account of these friendly relations, in 2008, the respondent advanced a loan to the petitioner, against which no documents were executed.

5. The record indicates that the petitioner deducted TDS on the interest payable on the loan amount and issued signed balance confirmations acknowledging the sum due to the respondent, after the closing of accounts at the end of each year. These balance confirmations were executed up to March 2014, whereas TDS deductions were carried out by the petitioner to the credit of the respondent until 31.03.2015, the TDS was also deposited with the Income Tax Department as is demonstrated by Form 26 AS and Form 16-A for the financial years 2014-15.

6. Subsequently, the petitioner ceased making payments toward the loan. Owing to such non-payment, the respondent served a legal notice dated 29.05.2017 upon the petitioner. Thereafter, the respondent instituted the underlying recovery suit, CS No. 1854/2017 against the petitioner.

7. During the pendency of this suit, the petitioner filed an application

[1]Hereinafter 'the Trial Court'
[2]Hereinafter 'CPC'

under Order VII Rule 11 of the CPC, seeking rejection of the plaint, on the grounds of limitation.

8. A perusal of the impugned order reveals that the learned Trial Court observed that the issue of limitation in the suit constituted a mixed question of fact and law; which required trial after evidence was brought on record.

9. In view thereof, the learned Trial Court dismissed the petitioner's application, holding that the suit did not warrant dismissal at the outset.

10. The relevant portion of the impugned order is reproduced hereunder:

> "16**.** Ld. counsel for defendant has further relied upon "SampuranSingh & Ors Vs Niranjan Kaur & Ors, CA no, 4544 of 1984decided on 23.02,1999 passed by Supreme Court of India" inorder to say that any alleged acknowledgment after expiry oflimitation would not revive a time barred case. The ratio of thisjudgment is not disputed but once again it is reiterated that issue oflimitation herein is a mix question of fact and law. The plaint of theplaintiff cannot be thrown at the threshold for the want of limitation without giving him an opportunity to prove that the suitis within limitation period. Similar is my reasoning with respect tothe third judgment i.e. S.P. Brothers A Partnership Firm Vs Biren Ramesh Kadakia on 27.03.2008 passed by Bombay High Court therefore, plaint cannot be rejected at the threshold on the ground of limitation in these circumstances. The ground of limitation becomes a mixed question of fact and law which needs to be decided after taking evidence on record."

11. Aggrieved thereby, the petitioner has preferred the present petition.

12. The learned counsel for the petitioner submits *inter alia* that the suit is, on the face of the record, barred by limitation. It is submitted that, the loan was advanced in 2008 and, as per Article 19 of the Limitation Act, 1963, the statutory period of limitation for the recovery of this loan was three years, which expired in 2011. Whereas, the suit in question was instituted by the respondent in 2017, after a delay of six years from the expiry of the period of limitation, and was consequently liable to be rejected at the outset under Order VII Rule 11 of the CPC.

13. In support of the aforesaid argument, reliance is placed on ***Ramisetty Venkatanna v. Nasyam Jamal Saheb***[3] where the Hon'ble Supreme Court held, that a plaint which creates an illusory cause of action through clever drafting, ought to be rejected at the threshold under Order VII Rule 11 of the CPC. Applying this principle to the present case, the learned counsel submits that the respondent cannot be permitted to circumvent the statutory bar on limitation through clever drafting.

14. Reliance is placed upon the decision of the Division Bench of the Bombay High Court in ***S.P. Brothers v. Biren Ramesh Kadakia*** [4] to submit that a TDS certificate is merely issued in discharge of statutory obligations under the Income Tax framework, and it neither amounts to acknowledgment of any subsisting liability, nor does it extend the period of limitation to institute a suit. It was held in the aforesaid case, that a TDS certificate is executed solely for the statutory purpose of acknowledging tax deduction at source and does not specify the terms of repayment, or the underlying contractual transaction itself.

15. Further reliance is placed on another decision of the Bombay High Court in ***ACTAL v. India Infoline Ltd.***[5], which reaffirmed the proposition laid down in *S.P. Brothers (supra)*.

16. During the course of arguments, learned counsel for the petitioner has placed on record an order dated 25.01.2024, passed by the Bombay High Court in ***Kirtikumar Shantilal Chandan v. Hitesh Pawanraj Mehta***[6]¸to support the contention that issuance of TDS certificate does not amount to

---

[3] **(2023) SCC OnLine SC 521**
[4] **2008 SCC OnLine Bom 1599**
[5] **2012 SCC OnLine Bom 1507**
[6] **Commercial Recovery Suit No. 11 of 2022, High Court of Bombay**

an acknowledgment of debt. The relevant submissions from the aforesaid order read thus,

> "3. It is submitted that the view of the Division Bench of this Court in the case of S. P. Brothers Vs. Biren Ramesh Kadakia (supra) holding that the issuance of the TDS certificates does not amount to an acknowledgment of debt within the meaning of Section 25 of the Indian Evidence Act, which has been affirmed by a Full Bench of this Court in the case of Jyotsna K. Valia Vs. T. S. Parekh and Co.4 which held that the TDS certificate is primarily to acknowledge the deduction of tax at source. That the certificate does not refer to any amount of loan or the rate of interest which is payable on the principal amount. That a bare reading of Order 37 Rule 2 shows that these provisions have restricted application and certificate for **tax deducted at source would not be a document which will fall in any of the clauses stated under Order 37 Rule 2**."

17. At last, it is contended that the impugned order warrants judicial interference, as it suffers from patent illegality, and is contrary to the settled position of law with respect to limitation.

18. *Per Contra*, the learned counsel for the respondent submits that the present petition is not maintainable under Article 227 of the Constitution of India, since an alternate efficacious remedy of revision, under Section 115 of the CPC is available to the petitioner.

19. In support of the aforesaid contention, the counsel for the respondent has relied upon ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society***[7], where the Hon'ble Supreme Court held, that a challenge under Article 227 cannot be raised where an efficacious remedy is already provided under the CPC.

20. It is contended that the petitioner executed signed balance confirmations and made continuous TDS deductions; which were credited to the account of respondent with the Income Tax Department, and that these

[7] **(2019) 9 SCC 538**

actions constitute an admission of liability and as per Section 19 of the Limitation Act, 1963, extended the period of limitation to file the suit. In this regard, the respondent has placed reliance on the judgment passed by this Court in ***Ansal Housing Ltd. v. Samyak Projects Pvt. Ltd***[8]**,** wherein it was held that the deposit of TDS extends the period of limitation in terms of Section 19 of the Limitation Act, 1963.The said judgment was upheld by the Division Bench of this Court, in ***Samyak Projects (P) Ltd. v. Ansal Housing Ltd***[9]**.**

21. The learned counsel contends that Form 26 AS establishes the last date of TDS deduction by the petitioner to the credit of the respondent with the Income Tax Department as 31.03.2015. Reckoned from this date, the underlying suit instituted in 2017, is well within the three-year period prescribed under Article 19 of the Limitation Act, 1963, as the aforesaid continuous deduction of TDS extended the limitation period under Section 19 of the Limitation Act, 1963.

22. Lastly, it is contended that execution of the signed balance confirmations and deposit of deducted TDS to the credit of the respondent with the Income Tax Department taken together, give rise to triable issues regarding limitation, and the underlying suit cannot be summarily rejected under Order VII Rule 11 of the CPC.

23. Heard learned counsels for the parties and perused the record.

24. The principal contention raised on behalf of the petitioner is that the suit, having been instituted in 2017 in respect of a loan allegedly advanced in 2008, was *ex facie* barred by limitation under Article 19 of the Limitation

[8]**2023 SCC OnLine Del 2387**
[9]**2024 SCC OnLine Del 3778**

Act, 1963 and therefore, the plaint ought to have been rejected under Order VII Rule 11(d) CPC. The learned Trial Court, however, found that the question of limitation could not be determined merely on the basis of the averments in the plaint and required consideration of the material concerning the TDS deductions by the petitioner to the credit of the respondent with the Income Tax Department and signed balance confirmations relied upon by the respondent.

25. In this regard, the material placed on record indicates, that TDS deductions to the credit of the respondent with the Income Tax Department continued being made by the petitioner in respect of the interest payable on the loan transaction. The record further indicates that such deductions continued up to 31.03.2015. The respondent has relied upon the corresponding Form 26 AS and Form 16 A to establish the said payments.

26. At this stage, it would be inappropriate for this Court to undertake a final adjudication on the evidentiary effect of each of these documents. However, the continued deduction and deposit of TDS by the petitioner to the credit of the respondent with the Income Tax Department cannot, *prima facie*, be disregarded while examining the question of limitation. The reason being that Section 19 of the Limitation Act, 1963 provides for computation of a fresh period of limitation where payment on account of a debt is made before expiry of the prescribed period, subject to the statutory requirement regarding acknowledgment of such payment.

27. The question whether TDS deductions constitute payment on account of the debt and consequently extend the period of limitation, has already received consideration by this Court in ***Ansal Housing Ltd. (supra).*** The learned Single Judge, upon consideration of Sections 194A and 198 of the

Income Tax Act, 1961 and Section 19 of the Limitation Act, 1963 held that the deposit of TDS, when made against the transaction in question, would constitute payment on account of the debt and extend the period of limitation.

28. More importantly, the aforesaid view was considered and affirmed by the Division Bench of this Court in ***Samyak Projects (P) Ltd. (supra).*** The Division Bench declined to accept the contention that the deposit of TDS could be ignored for the purposes of limitation and upheld the finding that TDS deposit resulted in a fresh period of limitation under Section 19 of the Limitation Act, 1963.

29. Additionally, the reliance placed by learned counsel for the petitioner upon ***S.P. Brothers (supra),*** and ***ACTAL (supra),*** does not advance the case of the petitioner. These decisions were rendered in the context of the evidentiary effect attributed to TDS certificates and cannot be read in isolation so as to displace the subsequent and binding pronouncement of the Division Bench of this Court in ***Samyak Projects (P) Ltd. (supra).*** The order in ***Kirtikumar Shantilal Chandan (supra)***, relied upon by the petitioner, is likewise distinguishable and does not detract from the views subsequently affirmed by the Division Bench of this Court.

30. It becomes imperative to mention that decisions of coordinate High Courts command weight and respect, but do not lay down binding law for this Court. Thus, while this Court has carefully examined and discussed the authorities of the Bombay High Court pressed by the petitioner, the principles enunciated therein remain purely persuasive. This view finds support from a decision of Hon'ble Supreme Court in ***Valliamma***

Champaka Pillai v. Sivathanu Pillai[10], wherein the Hon'ble Supreme Court held that the judgment of one High Court could, at best have a persuasive effect on another High Court and would not bind it in any manner.

31. At the stage of consideration of an application under Order VII Rule 11 of the CPC, the Court is required to examine whether, on a meaningful reading of the plaint and the documents relied upon, the suit is *ex facie* barred by any law. Where the question of limitation is capable of being affected by payments or acknowledgments and the relevant documents raise a triable issue in that regard, rejection of the plaint at the threshold would not be warranted.

32. In the present case, the pleading of the respondent is not confined merely to advancement of the loan in 2008. The respondent has also relied upon signed balance confirmations made by the petitioner and continued TDS deductions executed by the petitioner to the credit of the respondent with the Income Tax Department, including deductions made up to 31.03.2015. The effect of these transactions on limitation is a matter which cannot be brushed aside at the threshold. *Prima facie,* the material relied upon by the respondent attracts consideration under Section 18 and 19 of the Limitation Act, 1963 and in particular, the signed balance confirmations and the continued TDS deductions, both of which are of relevance to determine the question of acknowledgment/payment for the purposes of computation of limitation. The precise legal and evidentiary effect thereof would necessarily depend upon the documents and evidence led by the parties.

33. In respect of the aforesaid, reference is made to ***Salim D. Agboatwala***

---

[10] **(1979) 4 SCC 429**

v. Shamalji Oddhavji Thakkar[11] where the Hon'ble Supreme Court held that the power to reject a plaint under Order VII Rule 11 of the CPC, must be exercised with circumspection, especially where, the rejection is sought on the ground of limitation; as limitation is a mixed question of law and fact which warrants trial. The relevant portion of the aforesaid judgment reads as under:

> **"8.** Insofar as the rejection of the plaint on the ground of limitation is concerned, **it is needless to emphasise that limitation is a mixed question of fact and law**. It is the case of the appellant-plaintiffs that only after making inspection of the records in connection with the suit land available in the office of Defendant 3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before ALT were collusive, fraudulent and null and void. The appellant-plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.
>
> **xxxxxxxxx**
>
> **11.** As observed by this Court in *P.V. Guru Raj Reddy* v. *P. Neeradha Reddy* [*P.V. Guru Raj Reddy* v. *P. Neeradha Reddy*, (2015) 8 SCC 331 : (2015) 4 SCC (Civ) 100], **the rejection of plaint under Order 7 Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold**. Therefore, the **conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation**. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11."

34. In these circumstances, the learned Trial Court cannot be said to have committed any jurisdictional error in declining to reject the plaint under Order VII Rule 11 of the CPC. The finding of the learned Trial Court that the issue of limitation required consideration, in light of the TDS deductions executed by the petitioner to the credit of the respondent with the Income

[11] **(2021) 17 SCC 100**

Tax Department and other material on record, does not suffer from any perversity or patent illegality warranting interference under Article 227 of the Constitution.

35. The petitions, along with pending application(s), if any, are accordingly dismissed.

36. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J

AUGUST 24, 2026/ar/dd/as