

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CR No. 33/2024

MANZOOR AHMAD QASBA AND ORS

...Petitioner(s)

Through: Mr. Anil Bhan, Sr. Advocate with
Ms. Ahra Syed, Advocate.

Vs.

J AND K STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED

...Respondent(s)

Through: Mr. Ab. Rashid Malik, Sr. AAG with
Ms. Raheela Khan, AC.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

26.03.2025

(ORAL)

1. The petitioners in the instant petition have challenged order dated 14th of November 2024 (for short 'the impugned order') passed by the court of Additional District Judge, Srinagar, (for short 'the trial court') in case titled as "*The Jammu and Kashmir State Industrial Development Corporation Limited (SIDCO) Vs. Manzoor Ahmad Qasba and Others*".
2. Facts giving rise to the filing of the instant petition would reveal that the respondent Corporation herein had advanced a loan to the tune of Rs.90/- lakhs in the year 2021 to the petitioner 3 herein being a private limited company incorporated under the Companies Act and the petitioners 1 and 2 herein being its Directors. The said loan was sanctioned by the respondent herein in favour of the petitioners against immovable property comprising of 8 kanals of land covered under Survey No.3552-min and 3553-min situated at Mouza Khrew, Tehsil Pampore, Pulwama. The borrowers/petitioners herein after availing the loan, however, did not fulfill the terms and conditions of repayment upon which the said loan was sanctioned and became defaulters. The respondent Corporation, however, upon being approached by the borrowers/petitioners entered into a One Time Settlement with them and in furtherance thereof the

borrowers/petitioners availed financial assistance from the Indian Overseas Bank, Branch Office Dalgate, which had accepted to advance a loan of Rs.50 lacs in favour of the petitioner 3 herein. The said settlement resulted into execution of a supplementary agreement to the Principal Mortgage Deed dated 4th of July 2001 between the borrowers/petitioners herein and the respondent Corporation on 9th of December 2005. However, the borrowers/petitioners herein yet again failed to pay the amount which was agreed to be repaid by the borrowers/petitioners herein after arriving at the aforesaid One Time Settlement, and upon their failure to pay the same, the outstanding amount had got compounded to the tune of Rs. 39.04 lakhs payable by the borrowers/petitioners herein to the respondent Corporation as on 16th of September 2013 and even a notice issued by the respondent Corporation in this regard to the borrowers/petitioners herein having yielded no results, respondent Corporation herein instituted the suit seeking recovery of an amount of Rs. 39.04 lakhs from the borrowers/petitioners herein along with pendente lite and future interest thereof.

3. During the pendency of said suit before the trial court borrowers/petitioners herein, being defendants in the suit, filed an application under Order VII Rule 11 CPC read with Section 151 CPC before the trial court for rejection of the plaint, primarily on the grounds that the suit is hit by limitation and the trial court, upon considering the said application after inviting the objections thereto from the respondent Corporation herein in terms of the impugned order and dismissed the said application while holding that the question of limitation in the present case is a mixed question of fact and law, as such, the plaint cannot be rejected under and in terms of the provisions of Order VII Rule 11 CPC.

Heard counsel for the parties and perused the record.

4. Before proceeding to advert to the petition in hand and the case set up by the petitioners, it would be appropriate to refer to the ambit and scope of Order VII Rule 11 CPC.

Insofar as the said provisions of Order VII Rule 11 CPC is concerned, same enumerates the grounds of rejection of a plaint and mandates the rejection of the same on those grounds, thus, suggesting that the provisions of Order VII Rule 11 CPC is mandatory in nature, and if a plaint is found to be falling under any of the clauses contained in Order VII Rule 11 CPC, the court is bound to reject it having no other option. Thus, it is the duty of the court to examine the plaint and ascertain whether it discloses cause of action, whether the valuation is proper, whether sufficient court fee has been paid, whether suit is barred by law, whether plaint is presented in duplicate form, and whether plaintiff has complied with the provisions relating to the issuance of summons upon defendants.

It is also significant to mention here that the power exercisable by a court under Order VII of Rule 11 CPC can be exercised either upon an application filed by a party to the suit or suo-moto by a court, however, the court while exercising the power under order VII Rule 11 CPC has to consider the plaint and documents/material annexed therewith alone.

5. Keeping in mind the aforesaid provision and the position of law and reverting back to the case in hand, defendants in the suit being petitioners herein indisputably sought rejection of the plaint on the ground of limitation i.e. the suit is barred by law of limitation.

A closer examination of the plaint would tend to show that the suit has been filed for recovery of amount of Rs.39.04 lakhs having been availed as loan by the borrowers/petitioners herein from the respondent Corporation herein having remained unpaid on account of default of borrowers/petitioners even after One Time Settlement arrived at by the respondent Corporation with the borrowers/petitioners herein in the year 2005.

Further deeper perusal of the plaint and the documents annexed thereto would reveal that the cause of action to institute the suit by the respondent Corporation herein accrued in its favour upon failure of the borrowers/petitioners herein after sending of legal notice claimed to have been sent by the plaintiff/respondent Corporation herein to the borrowers/petitioners herein on 22nd of October 2013, which notice is

stated to have remained un-served owing to the report that the borrowers'/petitioners' unit has been found closed.

Having regard to the case set up by the plaintiff/respondent Corporation herein in the suit in general, it can safely be said that the plea of limitation urged by the borrowers defendants/petitioners herein before the trial court is interconnected and interwoven with the merits of the case set up by the plaintiff respondent Corporation herein, which could not be decided at this threshold by the trial court without deciding the same, along with other issues that could be framed by the trial court during the course of the trial in the suit. The trial court in this view of the matter while passing the impugned order cannot be said to have committed any illegality, irregularity or perversity in this regard notwithstanding of making a wrong reference to the provisions of Article 62 of the Limitation Act.

6. Viewed thus, for the aforesaid reasons, the petition lacks merit and is accordingly **dismissed**.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

26.03.2025

Ishaq

Whether the order is speaking? Yes/No
Whether approved for reporting ? Yes/No