

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.37 of 2013

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Md. Salauddin S/O Late Mustaqueen R/O Village Kagajiabasti, P.O. And P.S.
Kishanganj, District Kishanganj. Petitioner/s

Versus

Asgari Begum @ Gudia W/O Md. Jasim R/O Village Kagajiabasti, P.O. And P.S.
Kishanganj, District Kishanganj. Respondent/s

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-01-2015

Heard Mr. Nadim Seraj, the learned counsel for the petitioner, who in his astute manner, has tried to persuade this Court to take the view that the plaint on its own averments is bound to fail.

Grieved by the order of the learned court below rejecting the prayer of the defendant under Order-VII Rule 11 (d) C.P.C., the defendant-petitioner has filed this revision application.

The factual expose' which need to be noticed are that the suit has been filed by the plaintiff for specific performance of contract. It is the case of the plaintiff that the agreement for sale was executed on 21.03.2000 in which the time of performance was also fixed to be 31.07.2000. It has, however, been further averred that in spite of readiness and willingness of the plaintiff to perform her part of the contract, the defendant continued to avoid performance and ultimately the plaintiff has filed the suit for specific performance of

contract.

The defendant, filed the petition under Order VII Rule 11 (d) C.P.C. praying for rejection of the plaint on the ground that it was barred by limitation as prescribed under Article 54 of the Limitation Act. The learned court below by the impugned order has turned down the prayer of the defendant.

Mr. Nadim Seraj, the learned counsel for the petitioner has submitted that the averments in the plaint have been made in a clever manner purposely to avoid the bar of limitation. It has been canvassed by the learned counsel that the plaintiff was well aware of the agreement for sale and the date for performance fixed therein but in spite of that the plaintiff did not choose to file the suit within the prescribed period of limitation and as such the plaint was fit to be rejected as barred by limitation. The reliance by the learned counsel for the petitioner, in support of his proposition, has been placed on a decision of this Court in the case of **Dilip Gupta Vs. Debashish Palit 2014 (2) P.L.J.R. 481**. It has been pointed by the learned counsel that the decision in the case **Dilip Gupta** (supra) has been rendered relying upon the decision by the Apex Court in the case of **Ramesh B. Desai Vs. Bipin Vadilal Mehta 2006 (5) SCC 638**.

After careful consideration of the submissions by the learned counsel for the petitioner and the facts of the case including the plaint which has been brought on record in the writ application, it

is limpid that the suit has been filed for specific performance of contract on the basis of the agreement for sale executed in the year 2000. It is also pellucid that the execution of the sale deed as agreed was to be done by 31.07.2000. The suit has admittedly been filed in the year 2012. The plaintiff, however, has made averments explaining non-filing of the suit by making allegations of fraudulent misrepresentations by the defendant. It is not the case of the defendant that if those allegations are found to be true still the suit of the plaintiff is bound to fail. As such, it cannot be said that the suit filed by the plaintiff, on the bare reading of the plaint without any addition or subtraction is barred by limitation.

The learned counsel for the petitioner has placed reliance on the decision of this Court in the case of **Dilip Gupta** (supra) but it appears from the perusal of the judgment that the said decision has been rendered in entirely different setting of facts.

In view of the principles which have been well laid down, this Court is not persuaded to interfere with the impugned order as there is no error of jurisdiction or material irregularity. This revision application, is accordingly, dismissed.

Devendra/-

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(V. Nath, J.)