

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 259 OF 2011

Nandkumar Shankarrao Rasne .. Petitioner

Versus

Girish S/o Dharmavir Madan
and others .. Respondents

Shri Balaji Shinde, Advocate h/f Shri V. P. Latange, Advocate for the Petitioners.

Shri V. S. Bedre, Advocate for the Respondent No. 1.

Shri R. B. Singare, Advocate for the Respondent No. 4 - absent.

The Respondent Nos. 2, 3, 5 and 6 are served.

CORAM : S. V. GANGAPURWALA, J.

DATE : 07TH SEPTEMBER, 2015.

PER COURT :

1. Mr. Shinde, the learned counsel for the petitioner submits that, the Court rejected the application U/O VII Rule 11 of the Code of Civil Procedure without considering the pleadings. The pleadings in the plaint are required to be considered while entertaining application for rejection of plaint. The learned counsel relies on the judgment of the Division Bench of this Court in the case of Kanayalal Madhavji Thakkar Vs. Shree Padmanabh Builders reported in *2011(1) Mh. L. J. 939*.

2. Mr. Bedre, the learned counsel for the respondent No. 1

submits that, the Court has properly considered that the issue of limitation is a mixed question of law and facts and the pleadings in the plaint are to be read as a whole.

3. I have considered the submissions canvassed by the learned counsel for respective parties.

4. The issue of limitation is a mixed question of law and fact. In fact for determining the issue about limitation, the parties will have to adduce evidence. The pleadings in the plaint only if are perused, the date of knowledge is submitted in the plaint. Considering the facts, it was not permissible for the Court to reject the plaint, even the relief of injunction is sought. The plaint cannot be rejected in part also.

5. The learned counsel for the petitioner submits that, the Court has not framed the issue of limitation.

6. In case the present petitioner has pleaded about the limitation, then in that case the Trial Court is required to frame issue of limitation and determine the issue, along with other issues. The civil revision application according stands disposed of with aforesaid observations and directions. No costs.

[S. V. GANGAPURWALA, J.]