

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5405 OF 2012

Shri Dilip Raghunath Patil and Anr.] ... Petitioners

Versus

Shri Ganpatrao Bhimrao Sa Patil and Ors.] ... Respondents

Mr. Makarand Bakore for Petitioners.

Mr. S. S. Patwardhan for Respondent Nos.1 and 4.

Mr. I. M. Khairdi for Respondent Nos.2 and 3.

CORAM :- M. S. SONAK, J.

DATE :- MARCH 31, 2015

P. C. :-

1. Rule. With the consent of and at the request of the learned Counsel for the parties, the Rule is made returnable forthwith.

2. This petition is directed against the Order dated 15/05/2012, by which the Civil Judge, Senior Division, Sangli, had rejected the Petitioners' claim, as being barred by the law of limitation, by exercising the powers conferred by Order 7 Rule 11 Sub-Clause (d) of the CPC.

3. The suit in the present case, is for specific performance of the Agreement dated 14/08/2008. The Agreement, *inter alia*, records that the total consideration payable by the Petitioners to Respondent No.1 was Rs.23,13,000/- in respect of the purchase of the suit property. Out of this, it is further recorded that the Petitioners had paid to Respondent No.1 a sum of Rs.10,00,000/- and the balance payment had to be effected within a period of three years. This period of three years would therefore expire on or about 14/08/2011.

4. In the plaint, the Petitioners have made reference to notice dated 03/08/2011 by which the Petitioners offered to pay the balance amount and called upon the Respondent No.1 to execute necessary Conveyance in respect of the suit property. Alleging that the Respondent No.1 failed to execute the necessary Conveyance or comply with the terms and conditions of the Agreement dated 14/08/2008, the Petitioners instituted the suit seeking specific performance on 29/03/2012.

5. By the impugned order, the learned Civil Judge has held that the suit was barred by law of limitation, because the suit was not instituted within a period of three years from the date of execution of Agreement dated 14/08/2008. The learned Civil Judge has faulted the Petitioners for taking no steps between the period 14/08/2008 and 03/08/2011 and construed the alleged inaction on the part of the Petitioners for the said period as a circumstance to hold that the suit itself was barred by the law of limitation.

6. Having heard the learned Counsel for the parties, perused the impugned order as well as the records, in my judgment, the impugned order is unsustainable. Although, in a given case it may be permissible for the Civil Court to reject the plaint on the ground that the same is barred by the law of limitation, such an exercise can be carried out only in the case where the bar is evident from the statement in the plaint. If, the issue of limitation is a disputed question of law and fact, then it may not be appropriate for the Civil Judge to exercise bar under Order 7 Rule 11 of the CPC and reject the plaint at the threshold.

7. In the present case, the impugned order is vitiated by error apparent on face of record. The terms of the Agreement dated 14/08/2008 permitted payment of the balance amount within a period of three years i.e. up to 14/08/2011. The question as to whether such amounts were indeed offered or not within such prescribed period, is not really a question which can be gone into at the stage of deciding an application under Order 7 Rule 11 of the CPC. At this stage, the defence which the Defendants may have in the matter, is clearly irrelevant. At the stage of setting aside of application under Order 7 Rule 11 of the CPC, what is relevant is the averments in the plaint as they stand. Thus construed, it cannot be said that on the basis of some statement in the plaint, the suit was barred by the law of limitation. If the Agreement is to be taken into consideration at this stage, then the same permitted the effect of balance payment up to 14/08/2011. There was no question of cause of action, normally

accruing before the said date. The suit having been instituted on 29/03/2012, could therefore, not have been rejected on the grounds that the same was barred by the law of limitation.

8. Accordingly, the impugned order is set aside and Rule is made absolute in terms of prayer clause (a). There shall be no order as to costs.

9. It is made clear that the observations in the present order are for the limited purpose of considering the application under Order 7 Rule 11 of the CPC. As such, the observations need not influence the learned Civil Judge in the matter of final decision in the suit. The suit shall be decided on its own merits and in accordance with law.

(M. S. SONAK, J.)