

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.652 OF 2015

Ganesh Vishnu Tawar since deceased through LRs
Umesh Vishnu Tawar and others ... Applicants
Vs.
Anandrao Jagaru Jamale and others ... Respondents

Mr. Kalpesh Patil for Applicants.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 1, 2015

P.C. :

Heard Mr. Patil, learned Counsel for applicants at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants have challenged the judgment and order dated 09.09.2015 passed by the learned trial Judge by which the learned trial Judge rejected the application made by the defendants No.1 to 6 for rejection of plaint under Order 7, Rule 11(d) of C.P.C. on the ground that the Suit is barred by limitation.

3. He strenuously contended that while considering the application under Order 7, Rule 11(d) of C.P.C., it is not necessary to frame preliminary issue. Despite that, on 04.09.2014, the learned trial Judge framed preliminary issue, namely whether the Suit is barred by limitation. Apart from that, he submitted that the Suit is instituted in the year 2013 for specific performance of Contract dated 25.04.2001. In view of Article 54 of the Limitation Act, the Suit is clearly barred by limitation.

4. It is not possible to accept any of the submissions advanced by

Mr. Patil. Perusal of application shows that applicants did not challenge the order dated 04.09.2014 passed by the learned trial Judge framing preliminary issue. That apart, plaintiffs had issued notice on 20.10.2008. Though defendants No.1 to 6 received that notice, they did not give reply. Apart from that, before institution of the Suit, plaintiffs issued notice in the year 2013, and thereafter instituted the present Suit. Mr. Patil could not point out that after refusal of defendants No.1 to 6, plaintiffs did not institute Suit within 3 years from the date of refusal, and therefore, in view of Article 54, Suit is barred by limitation. In view thereof, I do not find any merit in this submission. The learned trial Judge will however consider this aspect at the time of deciding the Suit finally. Subject to that, Petition is dismissed.

(R. G. KETKAR, J.)

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