

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 174 OF 2007
WITH
CIVIL REVISION APPLICATION NO. 175 OF 2007

M/s. Life Properties & Ors.	..	Petitioners
VS.		
The Collector, Pune & Ors.	..	Respondents

Mr. S. S. Kanetkar for Petitioners.
Mr. Madhav Jamdar for Respondent Nos. 4 to 11.

CORAM : M. S. SONAK, J.
DATE: 30 MARCH 2015

P.C. :-

- 1] Civil Revision Application No. 174 of 2007 not on board. Upon mentioning, the same is taken on board.
- 2] These two Civil Revision Applications can be disposed of by means of a common order.
- 3] Civil Revision Application No. 174 of 2007 challenges the order dated 7 September 2006, by which the 9th Joint Civil Judge, Senior Division, Pune, has rejected the petitioners application under Section 9A of the Code of Civil Procedure, 1908 holding that the suit is not barred by limitation and consequently the court has jurisdiction to try and entertain the suit.

4] In Civil Revision Application No. 175 of 2007, the challenge is to the order of the same date, by which the learned Civil Judge, for the reasons set out in the order which is impugned in CRA No. 174 of 2007, has dismissed the petitioners' application under Order 7 Rule 11(d) of the CPC holding that the plaint cannot be rejected, on the grounds of bar of limitation.

5] Very recently, the Hon'ble Apex Court in the case of *Kamalakar Eknath Salunkhe vs. Baburav Vishnu Javalkar & Ors.*¹, in the context of the provisions contained in Section 9A of the CPC has observed thus:

“21. A perusal of the Statement of Object and Reasons of the Amendment Act would clarify that Section 9A talks of maintainability only on the question of inherent jurisdiction and does not contemplate issues of limitation. Section 9A has been inserted in the Code to prevent the abuse of the Court process where a plaintiff drags a defendant to the trial of the suit on merits when the jurisdiction of the Court itself is doubtful.”

6] In view of the aforesaid, there was no question of raising the issue that the suit was barred by law of limitation under Section 9A of the CPC. There is accordingly, no reason to interfere with the order impugned in CRA No. 174 of 2007.

1 Civil Appeal No. 1085 of 2015 decided on 12.01.2015

7] In so far as the order impugned in CRA No. 175 of 2007 is concerned, the same merely follows the reasoning whilst dismissing the order made under Section 9A of the CPC. Further, it is to be noted that Order 7 Rule 11 of the CPC contemplates rejection of the entire plaint and not merely a portion thereof. Accordingly, the learned Civil Judge was right in not entertaining the application under Order 7 Rule 11 of the CPC. The learned counsel for the petitioners however, relied upon the decision of the Hon'ble Apex Court in the case of *Hardesh Ores (P) Ltd. vs. Hede and Company*², to submit that rejection of a plaint on the ground of limitation is very much contemplated under Order 7 Rule 11(d), since, the statute of limitation is also of law within the meaning of Order 7 Rule 11(d). In that case however, the Apex Court, upon the meaningful reading of the plaint had come to the conclusion that the entire suit was barred by law of limitation and accordingly the plaint was rejected by resort to the provisions contained in Order 7 Rule 11 (d) of the CPC. That not being the position in the present case, the impugned order cannot be faulted.

8] In the result, there is no reason to interfere with the impugned orders. However, it is made clear that such non interference is basically on account of the circumstance that in the facts of the

2 (2007) 5 SCC 614

present case, the issue of limitation could not have been gone into, at this stage. Therefore, it will always be open to the petitioners, notwithstanding the impugned orders or for that matter the present order, to raise the issue of limitation at the stage of framing of issues and final disposal of the suit on its own merits.

9] It is further made clear that this Court has examined this matter only from the context of the provisions contained in Section 9A of the CPC and Order 7 Rule 11(d) of the CPC. Therefore, observations, if any, either in the impugned order or for that matter in the present order may be construed as being limited only for the said purposes.

10] With the aforesaid observations, the present Civil Revision Applications are dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)