

Surinder Pal Singh Bright and another Vs. Vishal Ramkrishna Dutta and others	...	Applicants
	...	Respondents

Mr. Narula i/b. M/s. Jhangiani, Narula & Associates for Applicants.
Mr. S. J. Chaurasia i/b. Ashok Law Firm for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 23, 2015

P.C. :

Heard Mr. Narula, learned Counsel for applicants and Mr. Chaurasia, learned Counsel for respondents No.1 and 2 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No.25 and 26 have challenged the judgment and order dated 19.01.2015 passed by the learned Joint Civil Judge, Senior Division, Panvel below exhibit-30 in Special Civil Suit No.173 of 2013. By that order, the learned trial Judge rejected the application made by the defendants No.25 and 26 for rejecting the plaint under Order 7, Rule 11 (a), (b) and (d) of C.P.C. respectively on the grounds of (a) no cause of action, (b) under-valued and (c) barred by limitation.

3. Mr. Narula submitted that respondents No.1 and 2, hereinafter referred to as plaintiffs, have instituted Suit for specific performance of agreements dated - (1) 16.03.2005, (2) 27.12.2005, (3) 25.01.2008 and (4) 15.10.2009. He submitted that in all these agreements, time for completing the transaction was specifically mentioned. The plaintiffs have instituted Suit beyond the time stipulated in these agreements, and thus, the learned trial Judge ought to have dismissed the Suit as barred

by limitation. He invited my attention to - (i) clause 24 of agreement of sale dated 16.03.2005, (ii) clause 26 of agreement of sale dated 27.12.2005, (iii) clause 25 of the agreement of sale dated 25.01.2008 and (iv) clause 23 of the agreement of sale dated 15.10.2009.

4. As against this, Mr. Chaurasia submitted that no time was specified for completing the transaction. The clauses in the agreements laid down reciprocal promises to be performed by the parties. He relied upon clauses 6 to 9 of agreement dated 16.03.2005. He submitted that similar clauses are there in the other agreements. The vendors were to obtain the requisite permissions from the concerned authorities. In the present case, no such permissions are obtained from the concerned authorities. He, therefore, submitted that the learned trial Judge has rightly rejected the application.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record as also (i) clause 24 of agreement of sale dated 16.03.2005, (ii) clause 26 of agreement of sale dated 27.12.2005, (iii) clause 25 of the agreement of sale dated 25.01.2008 and (iv) clause 23 of the agreement of sale dated 15.10.2009. Perusal of these clauses along with clauses 6 to 9 of agreement dated 16.03.2005 and other agreements consisting similar clauses does not indicate that agreements were to be specifically performed within the stipulated time. Mr. Narula did not dispute that clauses similar to clauses 6 to 9 are there in other agreements. Perusal of these clauses along with clauses 6 to 9 does not indicate that agreements were to be specifically performed within the stipulated time. The performance is, prima facie, dependent on the parties performing reciprocal promises.

6. In view thereof, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab