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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 928 OF 2014

Mr.Mahesh Gangaprasad Gupta and another ... Applicants

Vs.

Mrs.Stella Rocky Nunis and others ... Respondents

Mr.Chandrakant P.Deogirikar, Advocate for Applicants.

Mr.Manish Jain i/b S.M.Jain & Associates, Advocate for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 07th JULY, 2015

P.C. :

. Heard Mr.Chandrakant P.Deogirikar, learned Counsel for the applicants and Mr.Manish Jain, learned Counsel for respondent No.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No. 4 & 5 have challenged the judgment and order dated 01/03/2014 passed by the learned Joint Civil Judge, Junior Division, Thane below Exhibit 45 in Regular Civil Suit No. 471 of 2012. By that order, the learned trial Judge rejected the application made by defendants No. 4 & 5 raising objection as to maintainability of the Suit on the ground that it is barred by limitation. Defendants No. 4 & 5 filed application under Sections 9A read with Order 7 Rule 11(d) of C.P.C.

raising objection on the ground that the Suit is barred by limitation.

3. In support of this Application, Mr.Deogirikar submitted that defendants No. 1 to 3 executed agreement of sale in favour of the plaintiff on 23/07/1998. He invited my attention to clause (P) of the agreement of sale whereunder vendors were to execute power of attorney in favour of the purchaser so as to enable him to deal with the property. In pursuance thereof, vendors had given power of attorney on 14/05/1999. He submitted that defendants No. 4 & 5 are bonafide purchasers for value without notice. They had purchased the property in question by registered sale deed dated 17/12/2007 i.e. to say prior to even filing of the present Suit. Defendants No. 4 & 5 were impleaded on 30/03/2012. He submitted that in view of Article 54 of the Limitation Act, 1963, Suit is clearly barred by limitation as it was not instituted within 3 years from the date of when the plaintiff had notice that performance is refused. He relied upon Section 46 of the Indian Contract Act, 1872 (for short 'Act') to contend that Suit is not instituted within a reasonable time.

4. Mr.Jain supported the impugned order. He submitted that for considering application under Order 7 Rule 11(d) of C.P.C., averments in the plaint are only relevant. From the perusal of the averments in the plaint, it cannot be said that Suit is barred by limitation.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. The only objection raised as regards maintainability of the Suit is that it is barred by limitation. It is not in dispute that no date is fixed for performance of the contract. If that be so, second part of Article 54 of the Limitation Act, 1963 lays down that if no date is fixed, then the plaintiff has to institute Suit within 3 years from the date when the plaintiff had notice that performance is refused. From the perusal of the plaint and material on record, it is evident that performance is not refused. Mr. Deogirikar submitted that agreement of sale is executed on 28/07/1998 and the Suit is instituted in the year 2012 that is to say at least after 14 years. In view of Section 46 of the Act, Suit is clearly barred by limitation. Section 46 of the Act reads as under :

“Time for performance of promise, where no application is to be made and no time is specified.—Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. —Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.” Explanation.—The question “what is a reasonable time” is, in each particular case, a question of fact.”

6. Perusal of Section 46 of the Act shows that where no time for performance is specified, the engagement must be performed within a reasonable time. The explanation thereto lays

down that question “what is a reasonable time” is, in each particular case, is a question of fact.

7. In view of the explanation appended to Section 46 of the Act, “what is a reasonable time” is a question of fact for which parties are required to lead necessary evidence. In view thereof, I do not find any merit in this Application. Hence, Application fails and the same is dismissed. Liberty is reserved to the applicants to apply for expeditious disposal of the Suit.

(R. G. KETKAR, J.)