

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6603 OF 2011**

Amrut Rakhamasa Kshatriya	)	
Age 71 years, occuaption:	)	
Business residing at 3,	)	
Rajendra Colony, Nashik Road,	)	
422101, Talulka and District	)	
Nashik (Chief promoter of Jai	)	
Vijay Co-operative Housing	)	
Society (proposed)	)	..Petitioner

Vs.

1 Barjor Rustam (Rustamji) Joshi	)
Age 62 years, occupation	)
Business residing at 25,	)
Hira Meher, 108, Ode House	)
Road, Colaba Mumbai 400 005	)

2 Shri Faramroz Rustam (Rustamji) Joshi)	)
Age 63 years, Occupation: Business	)
residing at Pande Bunglow, Pande Road	)
Colaba, Mumbai 400 005	)

3 Shri Zarir Rustam (Rustamji) Joshi	)
Age 59 years, Occupation Business	)
residing at 25, Hira Meher, 108, Ode	)
House Road, Colaba Mumbai 400005	)

4 Shirin Rustam (Rustamji) Joshi	)
alias Sou Shirin Rustam Anwiya	)
Age 55 years, occupation: Household	)
residing at C-31, Meherjin, 109-A, Ode	)
House Road, Colaba Mumbai 400005	)

5 Roshan Zarir Joshi	)
Age 60 years, Occupation Household	)
residing at 26, Hira Meher, 108, Ode	)
House Road, Colaba Mumbai 400005	)

6 Khurshid Shiroy Bhoomgara	)
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Age 29 years, Occupation Advocate)
residing at 26, Hira Meher, 108, Ode)
House Road, Colaba Mumbai 400005)

7 Shri Jagdish Mawji Bhagat alias Patel)
Age 43 Years, Occupation)
Builder/Developer, residing at Aditya)
Darshan Apartment, Anand Nagar,)
Nashik Road, Taluka and District Nashik)

8 Shri Vijay Limji Patil)
Age 46 years, Occupation)
Builder / Developer residing at 43,)
Pasaydan, Satsang Colony, Vidya Nagari)
Dapur, Dhule)

..Respondents

Mrs. A. R. S. Baxi for the Petitioner
Mr. G. R. Agarwal for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 13th OCTOBER, 2015

ORAL JUDGMENT

1 Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this court is invoked against the order dated 15-2-2010 passed by the Learned 3rd Joint Civil Judge Senior Division, Nashik, by which order, the Learned Judge has decided the preliminary issue which has been framed in the Suit in question being Special Civil Suit No.205 of 2008 and held that in so far as the relief of specific performance of the agreement dated 19-9-1974 is concerned, the same is barred by limitation, whereas the

relief for declaration and injunction is within limitation.

3 It is not necessary to burden this order with unnecessary details as the Learned Counsel for the parties i.e. Ms. A.R.S. Baxi appearing for the Petitioner / Plaintiff and Mr. Girish Agarwal appearing for the Respondents /Defendants, are agreeable to the impugned order being set aside and the matter being relegated back to the Trial Court for a denovo consideration of the issue of limitation, in so far as the specific performance of the agreement dated 19-9-1974 is concerned.

4 It was sought to be contended on behalf of the Petitioner that the Trial Court has erred in holding that the Suit filed in the year 2008 is barred by limitation in view of the deemed permission contemplated by Section 27(4) of the Urban Land (Ceiling and Regulation) Act (hereinafter referred to as the said Act). It was the submission of the Learned Counsel that having regard to Section 5(3) of the said Act, the deeming fiction as contemplated in Section 27(4) would not come into play and therefore the suit filed in the year 2008 was within limitation.

5 Per contra, it was the submission of Mr. Agarwal based on clause (8) of the said agreement dated 19-9-1974 that the period of 15 months stipulated by the agreement was within the time before which the Urban Land

(Ceiling and Regulation) Act 1976 (ULC for short) came into force and therefore there is no question of the applicability of the ULC Act. It was the submission of the Learned Counsel that the ULC Act came into force on 17-2-1976 whereas the period of 15 months as contemplated by clause (8) has got over well before the ULC Act came into force and since the Plaintiff has not disclosed as to the permission obtained, the Suit is filed after a period of 3 years of the 15 months period coming to an end is beyond limitation.

6 It is not necessary for this court to go into the said rival contentions in view of the consensus between the parties as regards the remand to the Trial Court for a denovo consideration of the issue of limitation in so far as the relief of specific performance is concerned. In so far as the contention urged by the Learned Counsel Mr. Agarwal is concerned the same was not the ground on which the relief of specific performance was questioned on the ground of limitation. Hence in so far as the the findings relating to the relief of specific performance is concerned, the same stand set aside and the matter is relegated back to the Trial Court for a denovo consideration of the said issue. In so far as the finding in respect of relief of declaration and injunction is concerned, the same stands confirmed subject to the liberty which is granted to the Respondents / Defendants vide order dated 14-2-2011 passed in the Writ Petition filed by them. The impugned order therefore is set aside to the extent of the findings as regards the relief of specific performance being

beyond limitation and the matter is relegated back to the Trial Court for a denovo consideration of the said issue. The contentions of the parties in respect of the said issue on merits are kept open for being urged before the Trial Court. Needless to state that the Trial Court would consider the same in accordance with law uninfluenced by the impugned order or the instant order. The parties to appear before the Trial Court on 27-10-2015. The Trial Court to decide the said issue within two months of 27-10-2015.

7 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]