

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 116 OF 2014

Shri Savalaram @ Shrirangrao P.
Thube and Ors.

..Applicants

Vs

Shri Manikant M. Athure and Ors

.. Respondents

Mr. Parag M.Tilak , Advocate for Applicants.

**CORAM : R.G.KETKAR,J.
DATE : 14/12/2015**

PC:

1. Heard Mr. Parag Tilak, learned counsel for the applicants.
2. By this Application under Section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), original defendants no.1 to 3 have challenged the judgment and order dated 11.7.2013 passed by the learned 23rd Jt. Civil judge, Jr. Dn., Pune below Exhibit 106 in Regular Civil Suit no.5109 of 2012. By that order, the learned trial Judge rejected the application made by the applicants, hereinafter referred to as 'defendants no. 1 to 3, under Order VII Rule 11 of C.P.C. Defendants no. 1 to 3 filed application, inter-alia, contending that respondent no.1, herein after referred as 'plaintiff', has instituted suit in the year 2008 for specific performance of contract dated 23.1.1986. The agreement of sale fixed time limit of six months for performance. Defendants no. 1 to 3, therefore, contended that the period of six months expired

on 22.7.1986. In any case, in terms of Article 54 of the Limitation Act, period of three years expired on 21.7.1989. The suit instituted by the plaintiff in 2008, is clearly barred by limitation.

3. By the impugned order, the learned trial Judge rejected the application. Mr. Tilak reiterated the submissions that were advanced before the trial Court. He has taken me through the agreement of sale dated 23.1.1986 and in particular clauses (6) to (8) thereof. Clause (6) provided that within six months from the date of execution of the agreement of sale, defendants no.1 to 3 were to execute the sale deed. Clause (8) thereof provided that in case the sale deed is not executed within six months, defendants no.1 to 3 will refund earnest amount. In case defendants no. 1 to 3 do not execute the sale deed, he (plaintiff) will get the sale deed executed through the Court. Mr. Tilak submitted that neither within six months from the date of execution of the agreement of sale nor within three years from execution of the agreement of sale, the plaintiff instituted suit for specific performance and, therefore, it is clearly barred by limitation.

4. I have considered the submissions advanced by Mr. Tilak. I have also perused the material on record. Perusal of clause (5) of the agreement of sale shows that defendants no.1 to 3 were to obtain permissions from the appropriate Government

Department. Perusal of the assertions in the Plaint and in particular paragraph 3 thereof shows that the plaintiff asserted that the sale deed was to be executed within six months after getting the requisite permissions and that defendants no.1 to 3 undertook to bring all the permissions, demarcation etc. In short, the plaintiff came with the case that defendants no.1 to 3 were to obtain the requisite permissions and carry out demarcation work etc. It is only thereafter within six months the sale deed is to be executed. Prima facie, no material is brought on record by defendants no. 1 to 3 on this aspect. The learned trial Judge has considered Article 54 as also assertions in the plaint to the effect that in paragraph 14 the plaintiff visited defendants no.1 to 3 and demanded execution of the sale deed, whereupon defendants no.1 to 3 refused to execute and, therefore, cause of action arose to file the suit. The learned trial Judge also considered Article 54 of the Limitation Act and observed that at this stage it is not clear that time of six months was fixed for execution of the sale deed or not. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence no case is made for invocation of powers under section 115 of C.P.C. Application fails and the same is dismissed.

(R.G.KETKAR, J.)