

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

CIVIL REVISION APPLICATION NO.1038 OF 2014

Prabhu Hiralal Jethani & anr. : Applicants.
Versus
M/s. Preet Homes
Through its parnters
Suresh Hotechand Chabira and ors. : Respondents.

Mr. P G Chavan for the Applicants.

CORAM : R. M. SAVANT, J.
DATE : 20th October 2015

P.C.

1 The revisionary jurisdiction of this Court is invoked against the order dated 07/08/2014 passed by the learned 2nd Additional Judge, Small Causes Court & Joint Civil Judge, Senior Division, Pune by which order the Application filed by the Applicants under Order VII Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by limitation came to be rejected.

2 It is an undisputed position that in so far as an application under Order VII Rule 11(d) of the Code of Civil Procedure is concerned, the same has to be considered on the touchstone of the averments made in the plaint. The Trial Court has adverted to the clause relating to the cause of action and has observed that it has been stated in the said clause that the cause of action for filing the suit first arose on 07/04/2009 when notice was published in the

daily newspaper Prabhat and lastly arose on 03/10/2013. The Trial Court was therefore of the view that the suit filed could not be rejected on the ground of limitation as the cause of action is a bundle of facts. The Trial Court has also observed that the issue of limitation, in view of the averments made in the plaint in the instant case, is a mixed question of law and fact, and could not be gone into in an application filed under VII Rule (d) of the Code of Civil Procedure.

3 In my view, having regard to the findings recorded by the Trial Court, no case for interference in the revisionary jurisdiction of this Court is made out. The above Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]