IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
**Civil Revision Application NO. 421 OF 2016**

M/s Opal Properties ...Applicant
*Versus*
Mr. Pitambar Satramdas Kriplani
And Ors ...Respondents

**WITH**
**Civil Revision Application NO. 493 OF 2016**

M/s Opal Properties ...Applicant
*Versus*
Smt. Maya Govardhandas Kriplani
And Ors ...Respondents

....
Mr.Jaydeep Deo, Advocate for the Applicant.
....

CORAM : R. G. KETKAR, J.

DATE : 5th DECEMBER, 2016

P.C.

1. Heard Mr.Jaydeep Deo, learned Counsel for the applicant in both the applications, at length.

2. By these applications under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as the 'defendant', has challenged the judgments and orders dated 6.1.2016 passed by learned 7th Additional Judge, Small Cause Court, Pune below Exhibits-22

in Special Civil Suit No.1605/2014 and Special Civil Suit No.1606/2014 . By these orders, the learned trial Judge rejected the applications Exhibit-22 made by the defendants under Order VII Rule 11(a) and (d) of C.P.C. for rejection of the plaints.

3. In support of these applications, Mr. Deo submitted that the respondents/plaintiffs executed sale deeds in favour of the defendant on 20.10.2010. At the time of execution of the sale-deeds, the defendant paid 50% consideration. The defendant agreed to pay 25% consideration within three months, that is to say, on or before 20.1.2011. The remaining 25% consideration was to be paid on or before 20.4.2011. The defendant paid 25% consideration on 17.2.2011. However, he did not pay the remaining 25% consideration on or before 20.4.2011.

4. Mr. Deo submitted that the plaintiffs instituted suits on 27.11.2014. In order to bring the suits within the period of limitation, the plaintiffs contended that the cause of action for filing the suits arose when the plaintiffs issued notice through their Advocate on 28.11.2011 and, therefore, the suits filed on 27.11.2014 are within the period of limitation. Mr. Deo submitted

that admittedly remaining 25% consideration was due and payable on 20.4.2011. The plaintiffs ought to have instituted the suits within three years from 20.4.2011. As the plaintiffs have instituted the suits on 27.11.2014, the same are clearly barred by limitation. In support of these submissions, he relied upon Articles 53 and 59 of the Limitation Act, 1963 (for short, 'Act').

5. I have considered the submissions advanced by Mr.Deo. I have also perused the material on record and in particular paragraphs-7 to 10 of the plaint. As noted earlier, the plaintiffs executed sale-deeds in favour of the defendant on 20.10.2010. The defendant paid 50% consideration. The defendant was to pay 25% consideration on or before 20.1.2011 and remaining 25% consideration on or before 20.4.2011. Perusal of paragraph-7 shows that the plaintiffs averred that on 20.4.2011 they demanded remaining final 25% consideration amount from the defendant, but, the defendant just assured them of paying the balance amount within a short span of 15 days. After a period of 15 days again plaintiff No.1 met defendant and demanded the remaining final 25% consideration amount. Again the defendant assured plaintiff No.1 of paying the balance amount. After continuous follow up by the plaintiffs, the

defendant started to giving evasive answers. In paragraph-10, the plaintiffs averred that as the defendant failed to comply with the terms of the sale deed by not paying the consideration amount which was the essence of the contract, they issued legal notice through their Advocate on 28.11.2011. It was received by the defendant and instead of complying with the same, the defendant gave reply through his Advocate on 23.1.2012.

6. Perusal of the plaint does not indicate that the plaintiffs admitted refusal on the part of the defendant of not paying the balance final 25% consideration.

7. Mr. Deo relied upon Articles 53 & 59 of the Act, which read thus :

PART II--SUITS RELATING TO CONTRACTS

| | *Description of suit* | *Period of limitation* | *Time from which period begins to run* |
|---|---|---|---|
| **53.** | By a vendor of immovable property for personal payment of unpaid purchase-money. | Three years | The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance. |

PART IV--SUITS RELATING TO DECREES AND INSTRUMENTS

| | *Description of suit* | *Period of limitation* | *Time from which period begins to run* |
|---|---|---|---|
| **59.** | To cancel or set aside an instrument or decree or for the rescission of a contract. | Three years | When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. |

8. Perusal of Article 53 shows that period of three years is prescribed for institution of a suit by a vendor of immovable property for personal payment of unpaid purchase-money. The time for filing such a suit will begin to run from the time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance. In the present case, there is no material to establish that time was fixed for completing sale. In fact, sale deed is already executed. Even no time is fixed for balance payment.

9. In the present case, perusal of the averments in

paragraph-7 of the plaint clearly shows that it is the case of the plaintiffs that the defendant assured that he will make payment of final 25% consideration amount. In view thereof, it cannot be said that the defendant refused to make balance payment on or before 20.4.2011. Perusal of Article 59 shows that the period of three years is prescribed for cancellation of the instrument and the period begins to run when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

10. In the present case, the plaintiffs issued notice on 28.11.2011 which was replied by the defendant on 23.1.2012. The suits are instituted on 27.11.2014 and, therefore, it cannot be said that the suits are barred by limitation. In paragraph-10 of the impugned order, the learned trial Judge has considered the case of the defendant for rejection of the plaints under Order VII rule 11(a) and observed that the plaintiffs have set out the cause of action in paragraphs-7 and 15 of the plaint. As far as the suits are barred by limitation is concerned, the learned trial Judge has considered this aspect in paragraphs-11 and 12 and has observed that said issue can be decided only after the evidence is adduced by the parties. In other words the question

of limitation is a mixed question of law and facts.

11. For the reasons recorded in paragraphs-10, 11 and 12 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned orders. Hence, Civil Revision Applications fail and the same are dismissed.

12. At this stage, Mr. Deo states that the defendant will file applications under Section 9A of C.P.C. Statement made by Mr.Deo is recorded.

(R. G. KETKAR, J.)

Deshmane (PS)