

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.202 OF 2016

M/s. Kwaliti Constructions Private Limited]
and Ors.] ... Applicants

Versus

Mr. Sakharam B. Chinchpadkar and Ors.] ... Respondents

Mr. P. K. Dhakephalkar, Senior Advocate, a/w Mr. Amol Mhatre for Applicants.

Ms. Tejashree Joshi h/f Mr. A. A. Garge for Respondent Nos.2 and 3.

CORAM :- R. G. KETKAR, J.

DATE :- APRIL 16, 2016

P. C. :-

1. Heard Mr. P. K. Dhakephalkar, learned Senior Advocate for applicants and Ms. Tejashree Joshi, learned Counsel for respondent nos.2 and 3, at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 ('CPC'), the applicants have challenged the Judgment and Order dated 09/03/2016 passed by the 2nd Joint Civil Judge, Senior Division, Kalyan, below Exh.1 in Special Civil Suit No.44 of 2015. By that order, the learned Trial Judge rejected the application made by the applicants (hereinafter referred to as 'defendant nos.1,

and 58 to 60') under Section 9A read with Order 14 Rule 2 of CPC and overruled the objections raised by them and held that the suit is not barred by limitation.

3. Mr. Dhakephalkar contended that the plaintiffs have, *inter alia*, prayed for declaration that the Sale Deed dated 23/05/2013 is illegal, invalid and bad in law, *void-ab-initio* and not binding on the plaintiff and the same is liable to be cancelled; for declaration that the Development Agreement dated 11/09/2007 registered at Serial No.6624/2007 is totally illegal, invalid, bad in law, *void-ab-initio* and the same is revoked, cancelled and terminated and the same is not binding upon the plaintiffs, among other reliefs. He submitted that the Plaintiffs have not instituted suit within 3 years from execution of Development Agreement dated 11/09/2007 and Power of Attorney dated 11/09/2007, in terms of Articles 58 & 59 of the Limitation act, 1963. As the suit is instituted in the year 2015, it is clearly barred by limitation.

4. It is not in dispute that by prayer clause (a), the plaintiffs have sought declaration in respect of Sale Deed dated 23/05/2013. By prayer clauses (b) and (c), the plaintiffs have claimed declaration in respect of Development Agreement and Power of Attorney dated 11/09/2007. It is not in dispute that on 03/10/2013, the plaintiffs have issued notice to the defendants, *inter alia*, alleging breach of the terms of the Development Agreement and accordingly cancelled the Development Agreement and Power of Attorney both dated

11/09/2007. The defendants have replied this notice on 25/10/2013. The suit is instituted on 24/02/2015. It is, therefore, cannot be said to be barred by limitation in view of Articles 58 & 59 of the Limitation Act. The learned Trial Judge rightly held that the suit instituted is within limitation. In view thereof, I do not find that any case is made out for invocation of powers under Section 115 of CPC. Hence the application is dismissed.

5. Mr. Dhakephalkar states that the defendants will take out appropriate application for referring the parties to arbitration, in view of arbitration clause in the agreement. If such application is taken out, all contentions of the parties are kept open. Order accordingly.

(R. G. KETKAR, J.)