

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on February 23, 2016

Judgment delivered on March 8, 2016

+ **CS(OS) 2709/2014**

RAJ KISHAN KHANNA

..... Plaintiff

Through: Mr. Rajiv Nayyar, Sr. Adv.
with Mr. Arvind Kr. Sharma
& Mr. Anurag Jain, Advs.

versus

PARVATI DEVI (SINCE DECEASED) THRU. LRs

..... Defendant

Through: Mr. Premashish Choudhary,
Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. By this order, I would decide the preliminary issue framed by this Court on July 9, 2015 on the following terms:

“Whether suit instituted by the plaintiff is liable to be rejected under Order 7 Rule 11 CPC being barred by limitation?”

2. The relevant facts for considering the aforesaid issue are, that, the suit has been filed for specific performance of the agreement/receipt dated March 16, 2007, or in the alternative, for a decree of recovery of Rs. 4,60,00,000/- (Rupees 4 Crores 60 lakhs) in favour of the plaintiff and against the defendant. The case of the plaintiff in the suit is that on

March 16, 2007, the plaintiff entered into an agreement to sell/receipt dated March 16, 2007 with Parvati Devi, predecessor-in-interest of the defendants (hereinafter referred to as the 'Seller'), whereby the plaintiff had agreed to purchase land admeasuring 21 Bighas and 1 Biswa out of Khasra No. 65//21/2(3-4), 78//1 (4-16), 9/3(1-4), 10 (4-16), 11(4-16), 12//1/1(0-7), 7/20(1-8) situated in the revenue estate of Village Ujwa, Delhi recorded in the revenue records of Najafgarh, Tehsil, New Delhi-110043 from her on various terms and conditions as contained therein. The total price of the said land was fixed in between the parties at Rs. 4,60,46,875/-. It is the case of the plaintiff that he had paid Rs. 1 Crore at the time of the agreement, i.e. Rs. 5,00,000/- in cash and Rs. 95,00,000/- by way of pay order No. 142540 dated March 16, 2007. The receipt thereof was acknowledged by the seller. The plaintiff had averred that the seller was to obtain NOC from the concerned authority for sale of the land in favour of the plaintiff and shall give written intimation for the same along with the copy of the NOC to the plaintiff. The sale transaction was to be completed after obtaining valid NOC by the seller, and also against registration of valid sale document and handing over the vacant physical possession of the land to the plaintiff. It is the case of the plaintiff that after entering into the aforesaid agreement, the plaintiff did not receive any information from the seller

regarding obtaining the NOC from the concerned department. He contacted the seller many a times and asked her to obtain NOC and perform her part of the obligations under the said agreement on receipt of the balance sale consideration, but, she kept the matter pending on one pretext or the other till August 2007. The plaintiff had also averred that he was shocked to receive a legal notice dated August 13, 2007 issued on behalf of the seller through her lawyer, wherein, it was stated that the entire agreed sale consideration was Rs. 10,00,00,000/- (Rupees 10 Crores). The agreement of sell was amended on March 16, 2007 and the plaintiff was supposed to pay balance consideration of Rs. 9,00,00,000/- (Rupees 9 Crores) by June 2, 2007. The previous agreement of sale dated March 8, 2007 stood cancelled. Though in the legal notice, it was stated that necessary no objection has been obtained, but the plaintiff was neither given any detail or copy of any such NOC at any point of time. According to the plaintiff, the averments made in the notice dated August 13, 2007 were totally false and concocted in order to wriggle out of the valid agreement of sale. The plaintiff's response to the legal notice was given on August 23, 2007, wherein, the plaintiff had stated that the total sale consideration was Rs. 4,60,46,875/- at Rs. 1,05,00,000/- per acre and not Rs. 10,00,00,000/- (Rupees 10 Crores). The plaintiff denied that the time of execution of the agreement was upto

June 2, 2007. The plaintiff's case in response to the legal notice was that no intimation/information was ever given to him regarding obtaining of NOC despite plaintiff's regular follow up. It was further stated by the plaintiff, the seller had, by issuing the legal notice, sought to wriggle out of the agreement. The plaintiff had expressed his readiness to perform his part of obligations under the agreement and had also demanded a copy of the NOC, if obtained and to receive the balance consideration of Rs. 3,60,46,875/- and execute necessary sale documents in favour of the plaintiff. The plaintiff has averred that no response to the reply to the legal notice was given by the seller nor any copy of the NOC was supplied to him. He got issued another notice dated February 14, 2008 through registered post to the seller and her lawyer. In the said notice, it was clearly stated that no information had been supplied to the plaintiff and his lawyer regarding obtaining of the NOC from the concerned Tehsildar in favour of the plaintiff for the sale of land. It was further stated in the notice that the agreement between the parties is still valid, binding and subsisting and the plaintiff is always ready and willing to pay the balance sale consideration and perform his part of the contract. The said notice was duly served on the seller and her lawyer, but no response was received. The plaintiff's case was, even thereafter, he kept on telling seller to give him the copy of the NOC, receipt of balance

consideration and execute the relevant documents in his favour, but, she kept the matter pending on one pretext or the other. However, due to intervention of the members of the society, the parties again sat together and after much deliberations and negotiations, the seller assured the plaintiff to remain bound by the agreement entered into between the parties and also orally agreed with the plaintiff to obtain the NOC in his favour and complete the sale consideration in terms of the original agreement dated March 16, 2007. He would also state that the oral agreement and understanding so reached in between the parties as aforesaid, was also acted upon, the seller informed the plaintiff that she had taken necessary steps for obtaining the NOC from the revenue authorities. He states, however, the seller kept the matter pending till October 2011, when, the plaintiff personally visited the house of the defendant and enquired about the status of the NOC and completion of sale, the seller had sought some more time. She again expressed her readiness and willingness to sell the property to the plaintiff as per the agreed terms and conditions. It is the plaintiff's case that later on, the plaintiff has come to know that Parvati Devi, the Seller left for heavenly abode in the month of February, leaving defendant Nos. 1 and 2 as her legal heirs, as such, the plaintiff contacted both of them to hand over the valid NOC and execute the sale document under the aforesaid agreement

of sale as legal heirs of the seller. The defendant Nos. 1 and 2 assured the plaintiff to remain bound by the aforesaid agreement of sale with all the terms and obtain a valid NOC and complete the transaction. It is the plaintiff's case that despite demands and request and passing of considerable time both the defendants failed to inform the status of the NOC in favour of the plaintiff. The plaintiff also contacted them telephonically on August 1, 2014, and in terms thereof, the plaintiff was told, to sit on August 5, 2014 to do the needful but again they failed to keep their words and execute the relevant documents. Finally, one legal notice was sent on August 14, 2014 to the defendants to obtain a valid NOC from the concerned authorities, take the balance consideration, and execute the sale deed in favour of the plaintiff in terms of the agreement dated March 16, 2007. The said notice was duly served on the defendants.

3. The case of the defendants is that the agreement for sale of the suit property was for an amount of Rs. 10,00,00,000/- (Rupees 10 Crores). The plaintiff was never ready and willing to perform his part of the contract. It is averred that the suit is barred by limitation as the first agreement to sell was executed between the parties on March 8, 2007 and after the earnest money issued by cheque for an amount of Rs. 95,00,000/-, was dishonoured, the plaintiff again approached the

defendants on March 16, 2007 and issued a pay order for the above amount. Agreement to sell was executed by the seller and it was specifically mentioned in the agreement that the balance amount of Rs. 9,00,00,000/- (Rupees 9 Crores) shall be paid on or before 75 days i.e. by June 2, 2007. The plaintiff failed to pay the balance amount by June 2, 2007, as such, the legal notice was issued to the plaintiff by the seller on August 13, 2007, calling upon the plaintiff to make the balance payment within 7 days of the receipt of the legal notice with the stipulation that if the plaintiff fails to do so, then the seller would cancel the agreement and forfeit the earnest money. The plaintiff failed to pay the balance amount of the sale transaction, as such, the agreement to sell stood cancelled. According to the defendants, the facts of the matter are:-

“5.

(i) That the parties to the suit had entered into an agreement to sell dated 08.03.2007 whereby it was agreed by the plaintiff to purchase the land owned by Smt. Parvati Devi (deceased) measuring 21 Bighas and 1 Biswa, out of Khasra No- 65/21/2 (3-4), 78/1 (4-16), 9/3 (1-4), 10(4-16), 11 (4-16) 12/1/1 (0-7) & 20 (1-18), situated in the revenue estate of village Ujwa, Delhi State, Delhi recorded in the revenue records of Najafgarh Tehsil, New Delhi.

(ii) That the sale consideration was agreed to be Rs. 10,00,00,000/- (Rupees Ten Crore Only).

(iii) That it was also agreed between the parties that an earnest money/ bayana of Rs 10000000/- (Rupees one

crore) shall be paid by the plaintiff on the signing of the above mentioned agreement to sell and the balance amount of Rs 9,00,00,000/- (Rupees nine crore) shall be paid within three months from the date of the agreement.

(iv) That the plaintiff paid Rs 5,00,000/- (Rupees five lakh only) in cash and issued a cheque of Rs 95,00,000/- (Rupees ninety five lakhs only), vide cheque as earnest money on the day of signing of the above mentioned agreement to sell.

(v) That the cheque issued by the plaintiff for Rs.95,00,000/- (Rupees ninety five lakhs only), in favour of Smt. Parvati Devi (deceased) was dishonoured and thereafter Smt. Parvati Devi immediately approached the plaintiff and apprised him that the cheque issued by him was dishonored, the plaintiff requested the defendant (deceased) to give him some time and he shall make the payment within a week, defendant considered his request and consented to give him a week's time to make the payment of the above mentioned cheque.

(vi) That the plaintiff on 16.3.2007 issued a Pay Order of Rs.95,00,000/- (Rupees ninety five lakhs only), bearing no-142540 drawn on The Karur Vysya Bank Ltd Karol Bagh, New Delhi, in favor of Smt.Parvati Devi, this amount was paid by the plaintiff as earnest money towards the sale of the above mentioned land of the defendant.

(vii) That on 16.3.2007 the plaintiff also requested Smt. Parvati Devi (deceased) to draw a fresh agreement to sell on the same terms and conditions as enumerated in the previous agreement to sell dated 8.3.2007, with only one amendment that vide the agreement to sell dated 16.3.2007, it was agreed by plaintiff that he shall make the balance payment of Rs 9,00,00,000/- (Rupees nine crore) to Smt. Parvati Devi (deceased) on or before 75 days i.e on or before 2nd June 2007.

(viii) That with the execution of the fresh agreement to sell dated 16.3.2007 the previous agreement to sell dated 8,3.2007 stood cancelled.

(ix) That the plaintiff did not perform his part of the contract and had failed to make the balance payment as agreed by the plaintiff by 2.6.2007, despite the fact that Smt. Parvati Devi (deceased) reminding the plaintiff time and again, but his attitude showed that plaintiff were not interested in purchasing the land.

(x) That there was no stipulation that NOC shall be obtained by the seller, still Smt. Parvati Devi (deceased) signed on requisite documents for obtaining NOC and handed over to the same to the purchaser i.e. the plaintiff. It was informed that NOC had been obtained but the plaintiff still did not approach the defendant for completion of the same.

(xi) That after the summons in the above suit was served, the defendant enquired from the revenue department regarding the NOC and found out that a huge fraud and forgery had been committed by the plaintiff by forging the signatures of Smt. Parvati Devi (deceased), the plaintiff had obtained an NOC on 21.05.2007 for a lesser amount. The defendant seeks leave to file the requisite documents regarding the above forgery committed by the plaintiff. It is also stated that the NOC obtained by fraud and forgery. A copy of which has been obtained is filed along with.

(xii) That it was made known to the plaintiff that, it was agreed and undertaken by the plaintiff in the agreement to sell in para 5 that if he violates the terms and conditions of the agreement then Smt. Parvati Devi (deceased) is entitled to get the said amount of advance paid by the plaintiff being Rs. 1,00,00,000/- (Rupees one crore), forfeited and the transaction shall stand cancelled.

(xiii) That Smt. Parvati Devi (deceased) was always ready and willing to perform her part of the agreement, but the plaintiff have failed to perform his part of the agreement.

(xiv) Thus the defendant on 13.08.2007 issued a legal notice for payment of balance amount within 7 days of receipt of the notice failing which the defendant shall cancel the agreement and forfeit the earnest money paid by the plaintiff. The plaintiff after receiving the above legal notice, never approached the defendant for completion of the sale transaction as such the agreement for sale of the suit land stood cancelled in August, 2007”.

4. Mr. Rajiv Nayar, learned Senior Counsel appearing for the plaintiff would state that on the receipt of the legal notice dated August 13, 2007, on behalf of the the seller, the plaintiff had sent a reply wherein, the plaintiff had denied the total sale consideration being Rs. 10 Crores. He had also denied that the deal was finalized on March 8, 2007. The plaintiff had also denied that the balance payment was to be paid by June 2, 2007. He has highlighted the fact that, no copy of the NOC was ever been supplied to the plaintiff. It is his case that in the absence of a NOC, having been supplied to the plaintiff, it is as good, NOC was not obtained by the seller, which is a condition precedent for execution of the sale document. He draws my attention to clause 11 of the agreement dated March 16, 2007, which reads as under:

“11) That the first party shall obtain the NOC from the concerned authorities (Revenue Department) at its own cost and expenses and inform the second party within 15 days from the date of clearance of NOC.”

5. He states, in response dated August 23, 2007 to the legal notice of

the seller dated August 13, 2007, when the plaintiff had asked to supply him the copy of the NOC, the seller failed to supply the same. The time would not run against the plaintiff so as to attract limitation, to non-suit the plaintiff. Mr. Nayar, learned Senior Counsel would rely upon the Article 54 of the Limitation Act, to submit that, it specifies, the period of limitation for the suit for specific performance, which is, the date fixed for performance or if no such date is fixed when the plaintiff has notice that the performance is refused. According to him, that after the plaintiff had asked the seller to supply the copy of the NOC, no response was ever received by the plaintiff and in the absence of NOC, the limitation, seeking specific performance of the contract had not commenced. In this regard, he would rely upon the judgment of this Court in the case of *Arun Nirula (Deceased) through LRs Vs. K.N.Jain and Ors., 2013 (138) DRJ 520*, wherein, according to him, this Court on identical facts has held that for an agreement to sell, to fall in the first category of Article 54 of the Limitation Act, either the agreement should fix a calendar date for performance or the date fixed should be ascertainable with an event certain to happen, which, in this case, was supply of NOC by the seller.

6. On the other hand, learned counsel appearing for the defendants would rely upon the agreement dated March 16, 2007 to contend, the

obligations of the parties are very clear therein. He states that the agreement pre-supposes the receipt of balance amount of Rs. 9,00,00,000/- (Rs. 9 Crores) on or before 75 days from the date of agreement i.e. June 2, 2007, which the plaintiff had failed to perform. He would also state that vide legal notice dated August 13, 2007, the seller despite informing the plaintiff, the obtaining of NOC, no sale consideration was paid before the agreed date i.e. June 2, 2007. According to him, by the said notice, the seller had called upon the plaintiff to make the balance payment of Rs.9,00,00,000/- and complete the sale transaction for execution of the sale deed within a period of 7 days from the receipt of the notice, failing which, the earnest money paid by the plaintiff to the seller shall stand forfeited and the agreement shall stand terminated. He states, that by this communication, the seller has expressed herself that the NOC had been obtained by her and the balance amount need to be paid by the plaintiff within 7 days, failing which, the agreement would stand terminated. According to the learned counsel for the defendants, no doubt that the plaintiff had responded to the notice dated August 13, 2007 on August 23, 2007, but had not paid the balance consideration amount within the time granted by the seller, which had resulted in the forfeiture of the earnest money and the termination of the agreement. Thereafter, no judicial recourse was taken by the plaintiff till

2014 and a response to the legal notice denying the averments and calling upon the seller to supply a copy of the NOC, would not help the case of the plaintiff. In fact, there is no such requirement of supplying a copy of the NOC.

7. Learned counsel for the defendants would rely upon the judgments of this Court in the cases of ***Ravinder Nath Sahni Vs. Poddar Construction Co. P. Ltd. and Anr.*** and connected matter i.e. ***Sabina Jajodia Vs. Ravinder Nath Sahni, 211 (2014) Delhi Law Times 561*** in support of his contention. He would also rely upon ***AIR 1993 SC 1120 Smt. Thakamma Mathew Vs. M.Azamathulla Khan and Ors.*** to contend that when the seller had indicated that the failure to pay the amount of Rs. 9,00,00,000/- within a period of 7 days, shall entail the forfeiture of the earnest money and the cancellation of the agreement, the plaintiff was required to file the suit within three years from the expiry of the seven days, which he has not done, the suit is barred by time and need to be dismissed.

8. Having heard the learned counsel for the parties, it may be clarified here that, according to the plaintiff, the agreement to sell/receipt dated March 16, 2007 (at pages 3 to 5 of the documents of the plaintiff) is the agreement to sell executed between the parties. I note, the agreement to sell filed by the defendants also dated March 16, 2007 (at

pages 11 to 13 of the defendant's documents) has been denied by the plaintiff as being false and fabricated which even does not bear the signatures of the plaintiff. If that be so, the agreement to sell/receipt on which the plaintiff is relying reads as under:

“Received with thanks a sum of Rs. 1,00,00,000/- (Rs. One Crore only) Details as under:-

Rs. 95,00,00,000/- (Rs. Ninety Five Lacs only) by Draft No. 142540 Dt. 16.3.2007 draw on The Karur Vysya Bank Ltd. Bank Street Karol Bagh, New Delhi.

Rs. 5,00,00,000/- by Cash (Rs. Five Lacs only) as an earnest money/biana from Mr. Raj Kishan Khanna S/o Sh. Wazir Chand Khanna R/o W-21 Greater Kailash, Part II, New Delhi on a/c of sale proceeds of a piece of land area measuring 21 Bighas and 1 Biswa out of Khasra No. 65//21/2(3-4), 78//1 (4-16), 9/3(1-4), 10 (4-16), 11(4-16), 12//1(0-7), 7/20(1-8) situated in the revenue estate of Village Ujwa, Delhi recorded in the revenue records of Najafgarh, Tehsil, New Delhi-110043 as per terms and conditions of the agreement to sell executed by me in his/her/its favour.

Executed, signed and delivered by the said executed at Delhi on this 16.03.2007 in the presence of the following witnesses:

Witnesses:

EXECUTANT

1. Sd/-

*Sudish Kumar Rana
V & PO Bijwasan
N.D. 110061*

2. Amit Kumar

*Village Bijwasan
N.D. 61*

Sd/-

*Smt. Parvati Devi D/o
Sh. Naubat Ram W/o
Sh. Krishan Dutt Rana,
Vill. Bijwasan, New
Delhi”*

The aforesaid except, referring to the amount received from the plaintiff;

the particulars of the land, does not specify any further details as stated by the plaintiff in para 2 of the plaint. I also note, the defendants, had also referred to agreement dated March 8, 2007, annexed along with the documents (at pages 2 to 4 of the defendant's documents). This document has been denied by the plaintiff in the replication.

9. So, the issue of limitation needs to be decided on the basis of the following:

- (i) Legal notice of the defendant dated August 13, 2007.
- (ii) Reply of the plaintiff dated August 23, 2007.
- (iii) Further notice dated February 14, 2008
- (iv) Legal notice dated August 14, 2014.
- (v) Agreement to sell/receipt dated March 16, 2007, on which reliance is placed by the plaintiff.

10. First, the legal notice of the defendants dated August 13, 2007, wherein the following has been stated:

“6. That you on 16.3.2007 issued a pay order of Rs. 95,00,000 bearing No. 142540 drawn on The Karur Vysya Bank Ltd. Karol Bagh, New Delhi, in favour of my client, this amount was payed by you as earnest money to my client towards the sale of the above mentioned land of my client.

7. That on 16.3.2007 you also requested my client to draw a fresh agreement to sell on the same terms and conditions as enumerated in the previous agreement to sell dated 8.3.2007, with only one amendment that vide the agreement to sell dated 16.3.2007 it was agreed by you

that you shall make the balance payment of Rs. 90,00,00,000/- to my client on or before 75 days i.e. on or before 2nd June 2007.

8. That with the execution of the fresh agreement to sell dated 16.3.2007 the previous agreement to sell dated 8.3.2007 stood cancelled.

9. That you have not performed your part of the contract and have failed to make the balance payment on the agreed date i.e. 2.6.2007, despite the fact that my client has approached you time and again, but your attitude showed that you were not interested in purchasing the land.

10. That my client also informed you that necessary no objection has been obtained, but you have failed to pay the balance agreed sale consideration.

11. That it is made known to you that, it was agreed and undertaken by you in the agreement to sell in para 5 that if you violate the terms and conditions of the agreement then my client is entitled to get the said amount of advance paid by you being Rs. 1,00,00,000/- (Rupees One Crore) forfeited and the transaction shall stand cancelled”.

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I therefore, call upon you vide this notice to make the balance payment of Rs. Nine Crore and complete the sale transaction for execution of the sale deed, within seven days from the receipt of this notice failing which the earnest money/bayana paid by you to my client shall stand forfeited, and the agreement shall also stand terminated, and you shall have no right to the land of my client whatsoever under the said agreement, and my client shall be free and lawfully entitled to sell their land to some other prospective buyer without any objection from you, for which, you shall be solely liable and responsible to bear the cost and consequences suffered thereof”.

11. In response, the plaintiff in his reply dated August 23, 2007 states as under, more specifically, with regard to NOC:

“3. That your client was required to obtain No objection certificate from Tehsildar (N), for the sale of the said land in favour of my client and thereafter my client was to make the payment of balance sale consideration against registration of the sale deed and handing over of the vacant physical possession of the said land to my client.

XXX

XXX

XXX

7. That it is specifically denied that the time of balance payment was uptill 02.06.2007, however, even if it is presumed to be true, then also no intimation/information was ever given to my client regarding obtaining of NOC by your client despite regular follow up by my client.

8. That content of para 9, 10 and 11 are false and hence denied. It is specifically denied that my client failed to perform his part of the contract. No copy of NOC has even been even till today been supplied to my client”.

12. In further notice dated February 14, 2008, the plaintiff, states as under:

“1. This has reference to your notice dated 13.08.2007 on behalf of your abovenamed client and reply-cum-notice dated 23.08.2007 in response thereto. In this regard, I would like to again point out that no response has been received either from your side or from your client regarding any commitment for performance of her obligation by your client in terms of the receipt/agreement dated 16.3.2007 (hereinafter referred to as ‘THE AGREEMENT’) entered into between your client and my client, which is still valid and subsisting, regarding sale of land measuring 21 Bighas and 1 Biswa out of KhasraNo.65//21/2(3-4),78//1 (4-16), 9/3(1-4), 10 (4-16), 11(4-16), 12//1(0-7),7/20(1-8) situated in Village Ujwa, Delhi State, Delhi (hereinafter referred to as the ‘THE SAID LAND’/ THE SUBJECT PROPERTY’) by

your client.

2. That no information has been supplied to either me or my client regarding obtaining of No objection certificate from Tehsildar (N), for the sale of the said land in favour of my client, even till today.

3. The Agreement with my client is still valid, binding and subsisting. My client is always ready to pay the balance sale consideration and perform his party of contract.

In view of the above, I hereby once again remind you to advise your client to (i) immediately and unconditionally withdraw legal notice dated 13.08.2007 (ii) immediately provide copy of NOC if obtained and (iii) complete her part of the contract by accepting the balance sale consideration of Rs. 3,60,46,875 and simultaneously register sale deed of the subject property in favour of my client against handing over vacant possession, failing which, my client shall be constrained to take appropriate legal action against (both civil and criminal) against your client at your client's cost and risk".

13. It is noted from above, the plaintiff does not dispute the receipt of the notice dated August 13, 2007 wherein the seller had expressed herself that the NOC had been obtained and called upon the plaintiff to pay the amount of Rs. 9,00,00,000/- within a period of 7 days, otherwise, the earnest money shall stand forfeited and the agreement would stand terminated. A reading of the reply to the notice dated August 23, 2007 does refer to the aspect of NOC in para 3 and 8. In para 3, the plaintiff refers to the seller obtaining NOC, whereas in para 8, he goes further with regard to supplying the same to him.

14. Be that as it may, what is important is the, the Seller in her notice

dated August 13, 2007, had expressed that the contract would come to an end on failure to pay the balance amount within 7 days, which was a sufficient notice that the performance would stand refused on the expiry of 7 days. On the expiry of 7th day, cause of action had accrued to the plaintiff to seek a judicial recourse within three years in terms of Article 54 of the Limitation Act. The averments made in the plaint about plaintiff's notice dated February 14, 2008 and reference to certain meetings between him and the seller would not help the case of the plaintiff. Further, there is no material to substantiate the said averments by way of any documentary evidence. In any case, once cause of action has accrued, it would continue to run. Further, it is the case of the plaintiff that the seller was trying to wriggle out of the agreement to sell. It is a clear indication that the plaintiff was aware and conscious of the fact that he was likely to be in a disadvantageous position, if he did not take immediate legal recourse. It is also not the case of the plaintiff that the legal notice dated August 13, 2007, stands withdrawn. Further, there is nothing to suggest in the Agreement to Sell/receipt dated March 16, 2007, on which plaintiff has placed reliance, the seller was to obtain NOC from the authorities and supply a copy of the same to him. Further, the representation of the seller that she has obtained NOC cannot be overlooked. That apart, I note from the plaint after legal

notice dated February 14, 2008, the next date of meeting was in October 2011, which is also beyond 3 years. Having not filed the suit within three years from August 20, 2007 (expiry of 7 days) the filing of this suit in 2014 is barred by limitation.

15. Insofar as the judgment relied upon by the learned Senior Counsel for the plaintiff in the case of **Arun Nirula (Deceased) through LRs (supra)** is concerned, there, the Court was concerned with the following facts, which I reproduce as under:

“5. The appellant filed the suit from which this appeal arises, pleading: (i) that the respondents No.1 & 2 at different times were owners of plot bearing Khasra No.47/9, Village Mehrauli, New Delhi; (ii) that the respondents No.3 & 4 were property dealers of the area; (iii) that in April, 1992, the respondents No.3 & 4 projecting themselves as agents of the respondent No.1 approached the appellant and proposed a sale of the said land in Khasra No.47/9, Village Mehrauli, New Delhi and showed the Farad of the said land in the name of the respondent No.2 and a registered power of attorney executed by the respondent No.2 in favour of the respondent No.1 and represented that the respondent No.1 was thus entitled to sell the property; (iv) that the appellant decided to buy the part of the land admeasuring 410 sq. yds. out of total area of about 3,400 sq. yds. and the price after deliberations with the respondents No.1, 3 & 4 was fixed at Rs.50,000/- (v) that the appellant paid the entire consideration of Rs.50,000/- and the respondent No.1 executed an Agreement to Sell, a General Power of Attorney both dated 24th April, 1992 and some other relevant documents in favour of the appellant; (vi) that the appellant also paid the brokerage of the respondents No.3 & 4; (vii) that vacant possession of the land agreed to be sold was also handed over to the appellant and the

appellant constructed a boundary wall and a small room thereon; (viii) that the respondent No.3 also had a plot in the same area and in February, 1995 requested the appellant to allow use of the room aforesaid for keeping certain perishable items, stating that he was constructing a house on his plot which was adjacent to the subject plot; (ix) that the appellant so allowed permissive use of the property to the respondent No.3; (x) that the appellant in September, 1998 found that the respondent No.3 had constructed another room on the subject property and upon the appellant objecting, also disputed the title of the appellant to the property; (xi) that the appellant then contacted the respondent No.4 who also avoided the appellant; (xii) that the appellant thereafter contacted the respondent No.1 and requested him to execute Sale Deed but the conduct of the respondent No.1 was evasive. Accordingly, the suit for the reliefs aforesaid was filed on or about 26th May, 1999.”

16. The suit in **Arun Nirula (supra)** was filed on May 26, 1999 for specific performance of an agreement to sell dated April 24, 1992. The question arose before this Court was, whether agreement to sell of which specific performance was claimed, and which is in writing, fixed a date for performance inasmuch if the same is fixed, the period of limitation would be three years from such date. The clause under interpretation was clause 6, which is reproduced as under:

“6. That the first party shall apply for sale permission from the office of the lessor as well as the competent authority under provision of the Urban Land (Ceiling & Regulation) of 1976 and fulfil all the formalities for the completion of the sale deed in favour of the Second Party or his nominee(s) and shall execute a proper sale deed of the above mentioned property along

with the lease hold rights of the land underneath in favour of the second party or their nominee(s) and shall get the same regd. in the office of the Sub-registrar, Delhi after getting such sale permission etc. within 90 days from the date of receipt of such permission and fulfilling all the formalities.”

17. In para 14 of **Arun Nirula’s case (supra)**, this Court has held as under:

“14. Neither is there any provision in the Agreement to Sell in this regard nor is any answer forth coming from the counsel for the respondent No.4. I am of the view that merely because the Agreement provides for a time within which, after receipt of permissions, the Sale Deed will be executed, does not make the Agreement to Sell fall in the first category provided in Article 54 i.e. Agreements which fix a date of performance. Once the Agreement does not fix a date for obtaining the permission, mere fixing of time for execution of Sale Deed after the permissions are obtained would not amount to fixing a time for completing the sale inasmuch as in such cases there is no identifiable date by which the agreement is to be performed. For an Agreement to Sell to fall in the first category in Article 54, either the agreement should fix a calendar date for performance or the date fixed should be ascertainable with an event certain to happen. However, in the subject Agreement, the commencement of the period of 90 days fixed for performance i.e. for execution of Sale Deed, was dependent on receipt of permissions required and formalities to be completed and for receipt/fulfilment of which, no time was fixed. Thus, merely because the agreement fixes a period of 90 days, from receipt of permissions/completion of formalities, for execution of Sale Deed, would not make the agreement fall in the category where date for performance is fixed. Reliance in this regard can be placed on Tosh Apartments Pvt. Ltd. Vs. Pradeep Kumar Khanna 54 (1994) DLT 318. Thus, the Agreement in hand has to be held to be falling in the second category i.e. where no date for performance is fixed and in which case the limitation of

three years commences from the date when the plaintiff has notice that performance is refused”.

18. Surely, the facts which fell for consideration before the Court were different from the facts in this case. The case of **Arun Nirula (supra)** is not applicable in the facts of the present case in as much as the agreement to sell/receipt dated March 16, 2007, on which reliance is placed by the plaintiff does not have any stipulation with regard to obtaining NOC from the authorities, as a condition precedent for executing sale deed and hence, supplying the same is of no relevance. Rather, I find the judgment relied upon by the learned counsel for the defendant in **Smt. Thakamma Mathew (supra)** would cover the case of the defendants, wherein, in para 8, the Supreme Court has held as under:

“8.....In the present case, the appellant by his notice dated February 10, 1975 had clearly indicated that he had cancelled the agreement and had forfeited the advance amount of Rs. 18,000 deposited by the defendant. By the said notice, it was clearly indicated that the appellant was no longer willing to perform the agreement to sell dated November 12, 1974. In the circumstances, it was incumbent upon the defendant to have filed a suit for specific performance of the contract within a period of three years from the date of the said notice dated February 10, 1975 and if such a suit had been filed by the defendant, it would have been open to the appellant to show that it was barred by the provision contained in [Section 16](#) of the Specific Relief Act. The defendant did not choose to adopt that course and remained content with defending the suit filed by the appellant for cancellation of the agreement to sell dated November 12, 1974 and for recovery of the possession of

the property. Even if it is found that the appellant was not entitled to succeed in the said suit and the said suit is liable to be dismissed, it would not entitle the defendant to obtain a decree for specific performance of the contract in those proceedings. The High Court, with due respect, was not right in invoking its discretionary power under Order 7 Rule 7 C.P.C. to grant such a relief to the defendant. The said power conferred on the court does not enable it to override the statutory limitations contained in [Section 16](#) of the Specific Relief Act, 1963 and [Section 54](#) of the Limitation Act, 1963 which preclude the grant of the relief of specific performance of a contract except within the period prescribed by the section”.

19. Suffice to state, in the aforesaid judgment of **Smt. Thakamma Mathew (supra)**, the Supreme Court also held that the suit for specific performance of the contract should be filed within three years from the date of notice of cancelling the agreement. In the present case, it would be 7th day of receipt of notice dated August 13, 2007. The plea of Mr. Nayar, learned Senior Counsel for the plaintiff that till such time, the seller had given the copy of the NOC, no cause of action would have accrued to the plaintiff for approaching this Court, is unsustainable, when the seller had expressed herself terminating the agreement on failure to give the balance consideration within seven days.

20. In view of the aforesaid, the preliminary issue framed is decided in favour of the defendants. The suit is dismissed being barred by limitation.

21. No costs.

(V.KAMESWAR RAO)
JUDGE

MARCH 8, 2016

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