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

**WRIT PETITION NO. 284 OF 2014
WITH
WRIT PETITION NO. 2394 OF 2014**

Mahindra Hinoday Industries Ltd.
Through Chief Financial Officer,
Mr. K. Jayapra .. Petitioner
Vs.
Mrs. Rekha Suhas Joshi & Ors. .. Respondents

Mr. Shripad Murthy a/w. Ms. Monisha Mane, Ms. Wavisha Parkar i/b ALMT
Legal for the Petitioner.
Mr. S. R. Ronghe for Respondent Nos. 1 & 2.
Ms. Savita A. Prabhune for Respondent No.5.

CORAM : SMT. SADHANA. S. JADHAV, J.
DATE : 5th OCTOBER, 2017.

P. C. :

1. Heard.
2. Rule. Rule made returnable forthwith with the consent of the parties. The petitioner is original defendant No.3 in Regular Civil Suit No. 19 of 2013 pending before the Civil Judge Junior Division, Vadgaon-Maval.
3. It is the case of the petitioner that in the said suit the petitioner has filed an application under Order 15 Rule 3 of the Civil Procedure Code requesting the Court to frame a preliminary issue in respect of the bar of limitation in filing the suit as contemplated under the Indian Limitation Act. At the threshold, the learned counsel for the petitioner fairly submits that incorrect provisions of law were mentioned inadvertently.
4. The said application was rejected vide order dated 03.09.2013. Hence, this petition.

5. It is the contention of the petitioner that the plaintiffs have filed the suit for specific performance in the year 2013 based upon an agreement to sale dated 28.02.1982. According to the petitioner, the said agreement to sale was registered on 04.03.1982 and it was incumbent upon the plaintiffs to seek specific performance within three years from the date of registration of the sale deed. It appears from the record that the petitioner herein had filed an application also for valuation of the suit property. Similarly, another application was filed for deletion of the parties. The said application seeking valuation was also filed under the incorrect provisions of law. Be that as it may, the main contention of the petitioner is that the bar of limitation would be a preliminary issue and it is incumbent upon the Court to determine the preliminary issue at the threshold.

6. The learned Trial Court has recorded that the suit is based upon an agreement to sale. It is specifically observed that in Clause 11 of the said agreement to sale there are specific conditions for execution of the final sale deed and settlement of the whole issue.

7. Perused the registered agreement to sale. It is specifically contemplated that, the sale deed would be executed within eleven months of the fulfillment of the conditions precedent. It is specifically contended by the plaintiffs that the defendant i.e. petitioner herein has not fulfilled the conditions as contemplated under Clause 11 of the said agreement to sale and therefore the suit is not barred by limitation. According to the learned counsel for the petitioner, the said averments do not find place in the plaint

and therefore the same cannot be considered. In fact, learned counsel for the respondent vehemently submits that all specific averments in respect of Clause 11 have been stated in the plaint and therefore there is no question of framing the issue of limitation at the threshold. The learned counsel for the respondent also submits that the petitioner had filed several applications earlier and it appears to be an exercise to prolong the trial. Be that as it may, the order passed by the Civil Judge Junior Division, Vadgaon-Maval does not call for any interference at this stage.

8. Learned counsel for the petitioner has submitted that the application under Order 15 Rule 3 has been filed even prior to filing of the written statement. It would be open for the defendant to file a written statement contending therein the issue of limitation. It would not be necessary to frame a preliminary issue to that effect. The learned Civil Judge Junior Division, Vadgaon-Maval can proceed with the next stage of the suit. Since the suit is of the year 2013, the learned Civil Judge Junior Division, Pune is requested to conclude the hearing of the suit on or before 30.10.2018. All the contentions are kept open. Impugned order dated 03.09.2013 is upheld. Rule is discharged.

9. Learned Civil Judge Junior Division, Vadgaon-Maval shall not be influenced by the observations made hereinabove as they are restricted to the rejection of the application below Exhibit 46.

10. The petitions are disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]