

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION No. 215 OF 2017

Rajiv Shrikant Parlikar ... Applicant
Vs.
Sanjay Shrikant Parlikar & Ors. ... Respondents

Mr. R.S. Datar i/b. Mr. Akshay J. Kandarkar, Advocate for the applicant.
Mr. Siddesh Bhole a/w. Ms. Apurva Manwani, Advocate for respondent no. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **5th June, 2017.**

P.C.:

In this Civil Revision Application, the order dated 29th November, 2016 passed by the 2nd Joint Civil Judge Senior Division, Kalyan on Application below Exhibit 17 in Special Civil Suit No. 322 of 2015 thereby rejecting the application filed by the applicant/original defendant no. 2 under Order 7 Rule 11(d) of Code of Civil Procedure is challenged.

2. The respondent no. 1/original plaintiff has filed the Special Civil Suit No. 322 of 2015 for declaration and specific performance of the Oral Agreement of July 2011. The original plaintiff and original defendant nos. 1 and 2 are the directors of the company and there is

dispute between them in respect of transfer of shares.

3. The learned counsel for the applicant has submitted that prayer clause(a) which is in respect of declaration of the shares, in fact the said issue is pending before National Company Law Tribunal (NCLT). He submitted that the issue of limitation in respect of oral agreement is also required to be decided as preliminary issue. He submitted that the learned Judge ought to have taken into account that Agreement of July 2011 is challenged in the suit, which is filed in December, 2015 and therefore, it is beyond the prescribed period of three years. He further submitted that the cause of action is erroneously considered as 6th October, 2015, i.e., the date of the notice which was sent by the defendant to the plaintiff sounding that he is going to be removed in the Extra Ordinary General Meeting. The learned counsel prays that the said order is to be set aside.

4. The learned counsel for the respondent/original plaintiff has supported the order passed by the learned trial Court Judge and has submitted that NCLT cannot give declaration and therefore, the prayer of declaration is rightly made in the Special suit filed by the plaintiff.

5. Perused the impugned order. The learned Judge has taken into account all the contentions raised by the defendant while arguing the Application under Order 7 Rule 11 of Code of Civil Procedure and has also considered the ratio laid by the Hon'ble Supreme Court in *Foreshore Coop. Hsg. Ltd. & Ors. Vs. Pravin D. Desai and Ors.*, reported in 2015(3) ALL MR (SC) 951. The observations of the learned Judge that the averments made in the plaint are to be considered while deciding the cause of action and fixed the limitation at this stage cannot be faulted with. Hence, I do not find any reason to interfere with the order passed by the learned Judge. The points of limitation or maintainability, if raised by the defendant in their written statement, then that is to be framed as an issue while settling the other issue.

6. Civil Revision Application is dismissed.

(MRIDULA BHATKAR, J.)