

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

WRIT PETITION NO. 7094 OF 2014

Jaypal Dada Hanje. ... Petitioner.
Versus
Mr. Rajendra Savaji Patil & ors. ... Respondents.

Mr. Shrikrishna R. Ganbavale, advocate for petitioner.

Mr. Joel John Carlos, advocate for respondent No.1.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : OCTOBER 31, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioner and learned
Counsel for the respondent No. 1.

2 Rule. Rule made returnable forthwith with the consent of
the parties.

3 The petitioner herein happens to be the original defendant
No. 1 in Special Civil Suit No. 84 of 2000. The respondent No. 1 is

the original plaintiff who had filed suit on 14/3/2000 seeking specific performance. The plaintiff had relied upon the agreement dated 23/2/1995. It was contended in the plaint that the sale deed was to be executed within 6 months from 23/2/1995. It is a matter of record that six months would expire in August, 1995. The suit was filed on 14/3/2000. The learned Civil Judge, S.D. had framed issues as follows :

1. Whether the plaintiff proves to have ever been ready and willing to perform his part of the agreement ? The finding is recorded in the negative.
2. Whether the suit is within limitation ? The finding is in the negative.
3. Whether the defendant No. 1 proves that time for performance was essence of the agreement ? The answer is in the affirmative.
4.
- 5 Whether it would be equitable to grant decree for specific performance in view of the constructions raised on the suit property by defendant Nos. 2 to 4 ? The finding is in the negative.

The suit was dismissed by Judgment and Order dated 14th March, 2005.

4 Being aggrieved by the said Judgment and Order, the plaintiff had filed Civil Appeal No. 285 of 2005 which is pending before the District Judge at Kolhapur. During the pendency of the hearing of the appeal, the appellant had filed an application to amend the plaint incorporating paragraphs 10(a) and 10(b) to the plaint. The said application was allowed. All that the learned Judge had observed that the applicant had submitted that he would not examine any witness on the point as to whether the limitation is started from 9/3/1998 since there there was breach of terms of the agreement only in March, 1998. The learned Judge has considered that the proposed amendment would help the court to decide the issues in question.

5 In fact, the learned trial court had rightly observed that the defendants had proved that the time is the essence of the

agreement and had dismissed the suit on the point of limitation. By allowing the said amendment to the original plaint, the Appellate Court would be extending the limitation which is barred by Article 54 of the Indian Limitation Act, which would not be permissible in law, as it would change the very nature of the suit.

6 The learned Counsel for the respondent submits that in fact, the appellant had submitted that he would not examine any witness to prove the same. The issue is not of limitation and there is no question of examining any witness to that effect. However, the scope of Limitation Act cannot be extended at the appellate stage and hence, the order dated 20/2/2014 deserves to be quashed and set aside.

7 In the circumstances, the Writ Petition is allowed. Rule is made absolute in terms of prayer clause (b).

8 The appeal be heard expeditiously. It is further made clear that the appeal be decided on its own merits without being influenced by the observations made hereinabove.

Office to communicate this order to the concerned court forthwith.

(SMT. SADHANA S. JADHAV,J)