

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.116 OF 2017

Mangal Vastu Developers,	]	
A Partnership Firm, through its Partners	]	
	]	
a) Mrs. Kalpana Gunwant Patil,	]	
Age : 45 years, Occupation : Business,	]	
Having Office at 602, "B" Wing,	]	
Laxmi Residency, Checknaka,	]	
Wagale Estate Road, Thane (West).	]	
	]	
b) Mr. Gunwant Kisan Patil,	]	
Age : 48 years, Occupation : Business,	]	
Having Office at No.602, "B" Wing,	]	
Laxmi Residency, Checknaka,	]	
Wagale Estate Road, Thane (West).	]	 Applicants

Versus

1. Mr. Hamid Musa Shaikh	]	
Age : 47 years, Occupation : Business,	]	
Having Office at Room No.4, C-1,	]	
Building No.10, Sector-2, Vashi,	]	
Navi Mumbai.	]	
	]	
2. Mr. Shankar Vithal Karavkar,	]	
Age : 72 years, Occupation : Farmer,	]	
R/at Village Kolhi (Kopar), Tal. Panvel,	]	
Dist. Raigad.	]	
	]	
3. Mr. Kacher Dhanaji Thakur,	]	
Age : 55 years, Occupation : Farmer,	]	
R/at Village Ulwe, Tal. Panvel, Dist. Raigad.	]	
	]	
4. The Estate Officer,	]	
The City and Industrial Development	]	
Corporation Limited (CIDCO),	]	
CIDCO Bhavan, C.B.D. Belapur, Navi Mumbai	]	
	]	
5. The Additional Town Planning Officer,	]	
Construction Permission, 4 th Floor,	]	
Raigad Bhavan, C.B.D. Belapur, Navi Mumbai	]	 Respondents

Mr. Omkar Gupte for the Applicants.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH DECEMBER 2017.

P.C. :

1. Heard Mr. Gupte, learned counsel for the Applicants.
2. By this Civil Revision Application, the Applicants are challenging the order dated 22nd November 2016 passed by the Civil Judge, Senior Division, Panvel, below “Exhibit-26” in Special Civil Suit No.346 of 2016, thereby rejecting the Applicants' application filed under Order VII Rule 11(d) of the Civil Procedure Code.
3. The only issue raised for consideration before the Trial Court by filing the said application was that, the Suit filed by Respondent No.1 is apparently barred by limitation. It was submitted that, the suit agreement is of the year 2007 and, as can be seen from paragraph No.10 of the plaint, even the subsequent agreements are of the years 2009 and 2011. Therefore, the Suit filed in the year 2016 on the basis of the suit agreement and for cancellation of the subsequent agreements, cannot be called as within the limitation period. It is submitted that, though the cause of action for filing the Suit is stated to be 10th March 2016, it is not

a correct cause of action, as execution of the suit agreement and the subsequent agreements, which were registered agreements, amounts to notice to all concerned, including Respondent No.1, and therefore, it is submitted that the impugned order passed by the Trial Court, holding that the issue of limitation is a mixed question of facts and law and, therefore, dismissing the application filed by the Applicants for the rejection of the plaint on that ground, needs to be quashed and set aside.

4. Perusal of Clause No.10 of the plaint clearly goes to reveal that, after the suit agreement dated 15th August 2007, Respondent No.1 has approached the Applicants from time to time and he was given some assurances by Respondent Nos.2 and 3 that, after the letter of allotment is received from the CIDCO, the Applicants will inform the Respondents. According to Respondent No.1, thereafter, he was not keeping well. Thereafter, he became suspicious and he made inquiry in the CIDCO Office on 10th March 2016 and came to know that the Applicants have executed Lease Agreement on 3rd March 2009 and thereafter, again executed another agreement in favour of Respondent No.3 on 18th February 2011.

5. Thus, there are clear averments in the plaint itself that the first knowledge Respondent No.1 got about these two agreements was on 10th March 2016, when he made inquiry in CIDCO Office. Needless to state

that, from the date of knowledge, the period of limitation will start. Merely because the agreements are registered, the alleged knowledge for the purpose of limitation cannot be attributed to Respondent No.1.

6. Otherwise also, all these issues, whether there is a cause of action for breach of contract or whether Respondent No.1 got the actual knowledge only on 10th March 2016, are the questions of fact. It is also necessary to consider, as rightly observed by the Trial Court, as to whether unawareness on the part of Respondent No.1 can be attributed to non-diligence on his part and whether the ignorance pleaded is genuine or not. Having regard to all these facts, the Trial Court has rightly held that, in the facts of the present case, the issue of limitation being a mixed question of facts and law, it cannot be decided at the preliminary stage and on that count, plaint cannot be rejected under Order 7 Rule 11(d) of CPC and, therefore, rightly dismissed the Applicants' application for rejection of the plaint on that count.

7. The Revision Application, therefore, holds no merits; hence, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]