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

% **Decided on: 30.11.2017**

\+ RFA(OS) 28/2017

ISHWAR DAYAL KANSAL ..... Appellant

Through: Appellant in person.

versus

MOTION PICTURE ASSOCIATION ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J. (ORAL)

CM APPL. 15264/2017 (for condonation of five days delay in filing appeal against order dated 20.02.2017)

A perusal of the present application in conjunction with the order dated 21.08.2017 passed by this Court, reflects that institution of the accompanying appeal is delayed by 93 days if the said period is reckoned from 24.11.2014; the date when the impugned judgment came to be pronounced, and only five days if the said period is reckoned from 20.02.2015; when a petition seeking review of the impugned judgment dated 24.11.2014 came to be allowed in part. It is further observed that the appellant, who appears in person, assails both the impugned judgment dated 24.11.2014, as well as, the order dated 20.02.2015; partly allowing the review petition.

In this view of the matter, we are of the view that the appellant has been able to demonstrate sufficient cause for condoning the said delay in instituting the accompanying appeal.

The delay is condoned.

The application is allowed and disposed off accordingly.

RFA(OS) 28/2017

1. The present Regular First Appeal, under Section 96 of the Code of Civil Procedure, 1908 read with Section 10 of the Delhi High Court Act, 1966, impugns the judgment and order dated 24.11.2014; as modified by the order dated 20.02.2015 in review, passed by a learned Single Judge of this Court in CS(OS) No. 1954/2011 (hereinafter referred to as "the subject suit"), whereby, the claim of the appellant under the subject suit was rejected as barred by limitation.

2. The admitted facts as are necessary for the adjudication of the present appeal are briefly adumbrated as follows:

i. Pursuant to an advertisement issued on behalf of the respondent-company in various newspapers for sale of the property bearing No.27 in Block F, Netaji Subhash Marg, Darya Ganj, New Delhi (hereinafter referred to as "the suit property"), the appellant made an offer for the same on 04.12.1999, followed by a revised offer vide his communication dated 13.12.1999. The appellant vide the said revised offer had offered to pay a total sum of Rs.4 crores as sale consideration for the suit property, out of which an advance amount of Rs.20 lakhs was paid on 14.12.1999;

ii. The revised offer dated 13.12.1999 made by the appellant was accepted by the respondent-company vide letter dated 04.02.2000;

iii. Subsequently, the respondent-company filed an application dated 07.02.2000 with the Income-Tax Department, seeking permission to transfer the suit property to the appellant. Pursuant thereto, the Income-Tax Department issued a 'No Objection Certificate' in this behalf on 08.05.2000;

iv. Thereafter, there were numerous communications exchanged between the parties with regard to the sale of the suit property, resting with a communication dated 02.03.2005, whereby, the appellant was asked to attend a meeting at the respondent's office on 15.03.2005;

v. On 25.03.2005, the appellant addressed a communication to the respondent-company describing the purported discussions held in the meeting with the latter on 15.03.2005 and, further, asking the respondent-company to handover the possession of the suit property to him against a further part payment of Rs.1,20,00,000/- (rupees one crore twenty lakh). In response thereto, on 19.05.2005, the respondent-company addressed a communication to the appellant stating, *inter alia*, that the latter had not honoured the terms of the agreement entered into between the parties with respect to the suit property for a period of over five years; the appellant by his conduct demonstrated his unwillingness to conclude the transaction; and, lastly, asserting that the agreement can be "revived only on mutually agreed terms in writing";

vi. It is an admitted position that no further payments have been made by the appellant from 14.12.1999 until the time he instituted a suit for specific performance, declaration and permanent and mandatory injunction i.e. the subject suit, against the respondent-company on 04.07.2011; and

vii. In the subject suit, following issues were framed by a learned Single Judge of this Court by way of its order dated 28.04.2014:

> *"(i) Whether, notwithstanding there being an agreement between the parties as to the price at which the property was agreed to be sold by the defendant to the plaintiff and notwithstanding the grant of permission under Chapter XXC of the Income-tax Act, 1961, in view of the conduct thereafter of the parties, of negotiating the terms and conditions of the Agreement to Sell to be executed at that time coupled with delivery of possession by the defendant to the plaintiff, there was any legally enforceable concluded contract between the parties? OPP*
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> *(ii) Whether the suit claim is within time? OPP*
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> *(iii) If the above issues are decided in favour of the plaintiff, whether the plaintiff has been ready and willing to perform his part of the Agreement to Sell? OPP*
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> *(iv) Whether the discretion implicit in the grant of relief of specific performance is to be exercised in favour of the plaintiff? OPPr*
>
> *(v) Relief."*

The learned Single Judge whilst striking the above issues directed that Issue Nos.1 and 2 be treated as preliminary issues.

3. It is stated by the appellant that at the stage of arguments on the said preliminary issues, Issue No. 1 was not pressed on behalf of the respondent-company and arguments on their behalf were limited only to Issue No.2. In relation to Issue No.1, it is the contention of the appellant that on account of the circumstance that the respondent was required to have the suit property converted into a freehold property before the execution of the sale deed; which obligation has not been fulfilled by the respondent till date, there was, in fact, no delay in the institution of the subject suit and the same was filed within time.

4. *Per contra*, it was contended on behalf of the respondent before the learned Single Judge that the agreement for sale of the suit property had been revoked/cancelled in the year 2005; on account of the circumstance that the appellant had failed to adhere to the payment terms of the said agreement for sale of the suit property entered into between the parties and, therefore, the suit claim was clearly barred by limitation.

5. In this behalf, the learned Single Judge by way of impugned judgment and order dated 24.11.2014 has found as follows:

> *"5. It has been stated by the plaintiff that on various occasions, the plaintiff has been asking for possession of the suit property but the same has not been transferred to him till date. The property has still not been converted into a freehold property. Even though the plaintiff on 12th May, 2008 informed the defendant that it has come to his knowledge that DDA has approved the scheme for conversion of properties of Darya Ganj area into freehold, defendant did not act thereupon.*
>
> *6. It is the case of the plaintiff that as agreed between the parties, it was a condition precedent that the suit property would be converted from leasehold to freehold before execution of the sale deed. The resolution passed by the defendant in the year 1999 was to the effect that the suit property would be sold after converting the same into freehold. However, defendant failed to get the suit property converted into freehold.*
>
> *7. On the other hand it has been contended by the defendant that the suit is barred by limitation since the alleged agreement for sale of the suit property was revoked/cancelled by the defendant long ago. It has been stated that the offer of the plaintiff in respect of the suit property was made in December, 1999 which was accepted in February, 2000. After receiving permission from the Income Tax Authority on 8th May, 2000, which was*

communicated to the plaintiff, the defendant wrote to the plaintiff that all formalities have been completed, so the plaintiff shall pay the due amount as per the terms of the agreement. However, the plaintiff failed to make payment and it was informed by the plaintiff to the defendant that his funds were blocked with UTI and Tata Balanced funds.

8. Subsequently vide various letters the defendant informed the plaintiff that the said agreement between the parties stood cancelled and the advance earnest money is forfeited. In fact on 9th December, 2005, plaintiff issued a notice to the defendant asking him to hand over the possession of the suit property. In response to the said letter, defendant wrote to the plaintiff that more than 5 years had passed, the agreement stood expired long back and lapsed, agreement was executed initially for payment of Rs. 1, 20,00,000/- on receipt of Income tax clearance and balance of Rs.2,60,00,000/- within 18 months of agreement. The plaintiff failed to fulfill his obligations and the advance of Rs. 20 lacs stood forfeited.

9. It is averred that on receipt of the letter of the plaintiff to the defendant that it has come to his knowledge that DDA has approved the scheme for conversion of properties of Darya Ganj area into freehold, the defendant wrote a letter dated 19th May, 2005 stating that on account of continuous default on part of the plaintiff, the agreement stood cancelled and the same could be revived only on mutual agreed terms in writing.

10. It is also averred that vide letter dated 30th September, 2005 written by the defendant to the plaintiff in response to plaintiff's letter dated 12th August, 2005, it was specifically stated by the defendant that "the agreement stands lapsed on account of your failure and defaults. Over 5 years have passed and your being ready willing at this stage is irrelevant.

11. I have heard submissions on behalf of both the parties. In the matter when the issue of limitation is a doubtful case, normally, it becomes mixed question of facts and law. But at the same time, if Court finds that on the face of averments and facts stated in the plaint, the suit is time barred, then the Court can reject the plaint.

12. It is settled position in law that if by means of clever drafting a camouflage has been created in order to create an illusion of a cause of action, such cases should be nipped in the bud at the first hearing itself i.e. even before admitting the suit and issuing summons or any time thereafter. The judgments of the Supreme Court in the case of T. Arivandandam Vs. T.V. Satyapal, (1977) 4 SCC 467 (para 5); and Church of Christ Charitable Trust Vs. Ponniamman Education Trust, (2012) 8 SCC 706 (paras 10, 12 & 13); and Ajay Goel Vs. K.K.Bhandari, 1999 (48) DRJ 292 (paras 2, 5-8, 15) are relevant in this regard. Therefore, this Court can suo-moto exercise its powers under Order 7 Rule 11 CPC without there being a formal application for the said purpose.

13. Article 54 of the Schedule to the Indian Limitation Act, 1963 (herein after referred to as "the Act") postulates that for specific performance of a contract the period of limitation is three years from the date fixed for the performance, or, if no such date is fixed, from the date the plaintiff has notice that performance is refused. Under first part of Article 54, once date for performance of the contract has been fixed by the parties, the limitation begins to run from that date and specific performance of the contract could be had within three years from that date unless the parties by an agreement extend the fixed time.

14. In the present case, the date is already fixed between the parties, the parties have clearly mentioned the time within which the contract should be performed. The three years period therefore in the present case, has to be

reckoned the date is already fixed. It is only in a case where time is not an essence of the contract and no time is fixed for the performance of the contract, that three years period under Article 54, will be reckoned from the date when the plaintiff has noticed that the performance of the contract has been refused. Any communication issued by the plaintiff after expiry of the prescribed period of limitation has no consequence. The reference in this regard by the plaintiff is without any substance.

15. In Janardhanam Prasad Vs. Ramdas (2007) 15 SCC 174, the Supreme Court observed as under:

> ***"8. Applicability of the provisions of Article 54 of the Limitation Act must, therefore, be determined having regard to the aforementioned factual matrix in mind. It reads as under: "For specific performance of a contract Three years The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."***
>
> ***9. The Court, in applying the period of limitation, would first inquire as to whether any time was fixed for performance of agreement of sale. If it is so fixed, the suit must be filed within the period of three years, failing which the same would be barred by limitation. Here, however, no time for performance was fixed. It was for the Courts to find out the date on which the plaintiff had notice that the performance was refused and on arriving at a finding in that behalf, to see whether the suit was filed within three years thereafter."***

16. The controversy in regard to the limitation was considered by the Court in Tarlok Singh v.Vijay Kumar Sabharwal [1996] 3 SCR 879 wherein the Court has held

that when the time has been fixed for performance of the contract by operation of Article 54 of the Act, the time begins to run from the date fixed by the parties. The Court observed thus:

> ***"The question is: as to when the limitation began to run? In view of the admitted position that the contract was to be performed within 15 days after the injunction was vacated, the limitation began to run on April 6, 1986. In view of the position that the suit for perpetual injunction was converted into one for specific performance by order dated August 25, 1989, the suit was clearly barred by limitation. We find force in the stand of the appellants. We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from April 6, 1986. Suit merely for injunction laid on December 23, 1987 would not be of any avail nor the limitation began to run from that date. Suit for perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by way of amendment application filed under Order VI, Rule 17, C.P.C. on September 12,1979. It will operate only on the application being ordered. Since the amendment was ordered on August 25, 1989, the crucial date would be the date on which the amendment was ordered by which date, admittedly, the suit is barred by limitation. The Courts below, therefore, were not right in decreeing the suit."***

17. As per the documents placed on record, it is apparent no communication took place between the parties after September, 2000. It was on 25th January, 2003 that the plaintiff wrote to the defendant claiming possession of the

suit property to which defendant vide letter dated 5th February, 2003 replied that the delay has been on the part of the plaintiff who has defaulted in making the payment of the consideration. It was further informed to the plaintiff vide the same letter that the suit property is being kept vacant and the plaintiff may inform the defendant as to when he would give them the Pay Order of the balance amount. Thereafter vide letter dated 25th March, 2005, plaintiff again asked the defendant to hand over the possession of the suit property to the plaintiff. Defendant vide letter dated 19th May, 2005, informed the plaintiff as under:

> ***"Your letter dated 25.03.2005 has come as a shock to us contents are contrary to your agreement and acquiescence in the meeting you had with the members of the Executive committee on 15.03.2005 at 3.30 p.m.***
>
> ***From your letter it appears that you have been and are only speculating and waiting for market price to escalate so that you can attempt to have the property at the price of Rs 4.00 crores agreed to in the year 1999.***
> ***We are in 2005 and the Form 37-I signed by yourselves and us was filed on 08.02.2000 with the Income Tax department and No Objection Certificate from Income Tax was issued on 08th May, 2000 and till date you have not honoured any of your commitments.***
>
> ***As per terms of the agreement, upon getting the No Objection Certificate from Income Tax, you were to pay Rs. 1.20 crores to us and till date you have not made any move to do. Even vide our letter of dated 05.02.2003 you were asked to honour your commitments, which you did not.***

> ***Five years have already passed and you were apprised of this fact in the last meeting on 15.03.2005. Please note that we have never been at fault and it is you, the buyer, who had to be 'Ready and Willing', but your conduct shows otherwise.***
>
> ***On account of continuous default on your part in honouring the terms of agreement, the Agreement can be revived only on mutually agreed terms in writing"***

18. In reply to the same, plaintiff wrote letter dated 12th August, 2005 denying the averments made in letter dated 19th May, 2005 and again calling upon the defendant to handover the possession to the plaintiff. Vide letter dated 30th September, 2005 written by the defendant to the plaintiff in response to letter dated 12 th August, 2005, it was specifically stated by the defendant that

> ***"The agreement stands lapsed on account of your failure and defaults. Over 5 years have passed and your being ready willing at this stage is irrelevant."***

19. From the above it is apparent that vide letter dated 12th August, 2005, the defendant had specifically stated that the agreement stood lapsed between the parties. The limitation for taking an action against the defendant by the plaintiff, if calculated from the said date, ended on 11th August, 2008. During this period, there is no assurance or acknowledgement or extension of time of period of performance given by the defendant to the plaintiff. Any communication/ correspondence on behalf of the plaintiff in absence of any subsequent acknowledgment by the defendant within the meaning of Section 18(1) of the Act is irrelevant.

<u>20. Having gone through the pleadings and the documents placed on record, this Court is of the considered opinion that the suit is time barred. Under these circumstances, there is a force in the submission of the learned Senior counsel for the defendant. The suit is clearly barred by limitation and in order to save cost of the parties and time of this Court, the same is rejected. No orders as to cost.</u>"

(Emphasis supplied)

6. Subsequent thereto, the appellant instituted RA No.37/2015, seeking review of the impugned judgment and order dated 24.11.2014. The said review application was disposed off vide said order dated 20.02.2015, allowing the same in part. For the sake of felicity, the said order dated 20.02.2015 is reproduced in full hereinbelow:

<u>"R.A. No. 37/2015 (for review of order dated 24th November, 2014, by plaintiff)</u>

The abovementioned review application has been filed by the plaintiff against the judgment dated 24th November, 2014. Apart from other grounds taken in the review application, in paras 9 & 10 thereof, it is stated by the plaintiff that in the letters dated 19th May, 2005 and 12th August, 2005, there is no mention that the agreement stood lapsed. The said fact is incorrectly stated in para 19 of the said judgment. The plaintiff, who is appearing in person, states that from the entire correspondences exchanged between the parties, there was no reference by either of the parties that the agreement stood lapsed.

I have heard the plaintiff in the review application. For the purpose of deciding the present review application, it is necessary to reproduce paras 18 & 19 of the judgment which read as under:-

"18. In reply to the same, plaintiff wrote letter dated 12th August, 2005 denying the averments

made in letter dated 19th May, 2005 and again calling upon the defendant to handover the possession to the plaintiff. Vide letter dated 30th September, 2005 written by the defendant to the plaintiff in response to letter dated 12th August, 2005, it was specifically stated by the defendant that

> *"The agreement stands lapsed on account of your failure and defaults. Over 5 years have passed and your being ready willing at this stage is irrelevant."*

19. From the above it is apparent that vide letter dated 12th August, 2005, the defendant had specifically stated that the agreement stood lapsed between the parties. The limitation for taking an action against the defendant by the plaintiff, if calculated from the said date, ended on 11th August, 2008. During this period, there is no assurance or acknowledgement or extension of time of period of performance given by the defendant to the plaintiff. Any communication/correspondence on behalf of the plaintiff in absence of any subsequent acknowledgment by the defendant within the meaning of Section 18(1) of the Act is irrelevant."

The plaintiff is correct in stating that in the letter dated 12th August, 2005, there is no reference that the agreement has been lapsed. In fact, due to oversight and typing mistake, the said reference has given in para 19 of the judgment which is now reviewed. As a matter of fact, in the reply to the letter dated 12th August, 2005, the letter was written by the defendant on 30th September, 2005 wherein it was *specifically mentioned that the agreement stood lapsed. The said correction is made accordingly. Para 19 of the judgment be now read as under:-*

> *"19. From the above it is apparent that in the letter dated 30th September, 2005 written by the defendant to the plaintiff in reply to his letter dated 12th August, 2005, the defendant has specifically stated that the agreement stood lapsed between the parties. The limitation of three years for taking an action against the defendant by the plaintiff is to be calculated from the said date, i.e. 30th September, 2005. The extracts of the said letter read as under:-*

"Motion Pictures Association
(Regd. U/s 25 of Companies Act)
An apex body of Film Distributors & Exhibitors of Delhi & Uttar Pradesh
52/55 Mangal Market, Bhagirath Palace, Chandni Chowk, Delhi 110006

Regd. A.D.

Ref.No.MPA/D-Bldg/1975/2005 *30.09.20005*

Shri Ishwar Dayal Kansal
7/35, Ansari Road,
Daryaganj,
New Delhi – 110002

Reg: Property No. 27, Block No.F, Darya Ganj, New Delhi

Sir,

This has reference to your letter dated 12.08.2005, the contents of which are wrong being contrary to the facts.

You have raised false allegations and the same are denied. The facts stands reiterated as per our letter dated 19.05.2005.

The agreement stands lapsed on account of your failure and defaults. Over five years have passed and your being ready and willing at this stage is irrelevant.

Yours faithfully,
For Motion Pictures association

Sd/-
Vinod K Lamba
Hony. Gen. Secretary"

During this period, there is no assurance or acknowledgement or extension of time of period of performance given by the defendant to the plaintiff. Any communication/correspondence on behalf of the plaintiff in absence of any subsequent acknowledgment by the defendant within the meaning of Section 18(1) of the Act is irrelevant."

As regards the other grounds taken in the review application, I am not inclined to interfere in my judgment. The same is accordingly disposed of with the abovementioned clarification and review of para 19 of the judgment.

The review application is disposed of."

7. In relation to the subject dispute before us, it would be relevant to take note of the said letter dated 25.03.2005, whereby, the appellant had admittedly requested the respondent-company to handover the possession of the suit property to him against a further part payment of Rs.1,20,00,000/- (rupees one crore twenty lakh), as further delay would occasion heavy losses and damages to him; and, further, stated that the latter would still have 18 months' time for executing the sale deed, subsequent upon handing over the possession of the suit property to the former.

8. As noted hereinbefore, in response thereto, the respondent addressed the said communication dated 19.05.2005, which the appellant admits to have received. For the effective adjudication of the

present appeal the said communication dated 19.05.2005 is reproduced hereinbelow in full:-

"Ex. Committee/537/05 Regd.Speed Post Dated: 19.05.2005

Shri. Ishwar Dayal Kansal,
7/35,Ansari Road,
Daryaganj,
New Delhi-110 002

Reg.: ***Property No. 27, Block No. F, Darya Ganj, New Delhi***

Sir,

Your letter dated 25.03.2005 has come as a shock to us as contents are contrary to your agreement and acquiescence. In the meeting you had with the members of the Executive Committee on 15.03.2005 at 3.30 p.m.

From your letter it appears that you have been and are only speculating and waiting for market price to escalate so that you can attempt to have the property at the price of Rs. 4.00 crores agreed to in the year 1999.

We are in 2005 and the Form 37-I signed by yourselves and us was filed on 08.02.2000 with the Income Tax department and No Objection Certificate from Income Tax was issued on 08th May, 2000 and till date you have not honuored any of your commitments.

As per terms of the agreement, upon getting the No Objection Certificate from Income Tax, you were to pay Rs. 1.20 crores to us and till date you have not made any move to do so. Even vide our letter of dated 05.02.2003 you were asked to honour your commitments, which you did not.

Five years have already passed and you were apprised of this fact in the last meeting on 15.03.2005. Please note that we have never been at fault and it is you, the buyer, who *had to be 'Ready and Willing', but your conduct shows otherwise.*

On account of continuous default on your part in honouring the terms of agreement, the Agreement can be revived only on mutually agreed terms in writing.

Yours faithfully,
FOR MOTION PICTURES ASSOCIATION

(VINOD K. LAMBA)
Hony. Gen. Secretary

9. A plain reading of the above communication dated 19.05.2015 reflects that the respondent-company had clearly stated as follows:

a) That the appellant had failed to pay Rs.1,20,00,000/- (rupees one crore twenty lakh) to the respondent, which was required to be paid at the time of former obtaining a 'No Objection Certificate' from the Income-Tax Department, the same having been obtained on 08.05.2000;

b) That despite earlier communications by the respondent-company to the appellant, including an earlier letter dated 05.02.2003, the latter had failed to honour his commitments under the agreement for sale of the suit property;

c) That five years had elapsed since then and, resultantly, the appellant by his conduct had demonstrated that he was neither ready nor willing to conclude the transaction; and

d) That on account of continuous default on the part of the appellant in honouring the terms of the agreement, the same could now only be revived on mutually agreed terms in writing.

10. Although, the learned Single Judge in its impugned judgment and order dated 24.11.2014, as modified by the said subsequent order dated 20.02.2015, in order to non-suit the appellant has relied upon a communication dated 30.09.2005, purportedly addressed by the respondent-company to the former, wherein the latter had specifically stated that the subject sale agreement stood lapsed; it is strenuously urged by the appellant that the same is only an unsigned photocopy, the contents of which have been denied by him and, consequently, the same could not have been taken into consideration by the learned Single Judge without positive evidence in that regard.

11. In this behalf, we observe that though the learned Single Judge relied on a communication dated 30.09.2005, purportedly addressed by the respondent-company to the appellant, to conclude that the subject suit was barred by time, we are of the view, that even if in terms of the contention made by the latter to the effect that the said letter dated 30.09.2005 cannot be accepted; the refusal of the appellant to perform his reciprocal obligations under the subject agreement for sale of the suit property are clearly and unequivocally spelt out by the respondent-company's said communication dated 19.05.2005, which has been reproduced *in extenso* hereinbefore.

12. In this view of the matter, since the subject suit was instituted on 04.07.2011, that is beyond a period of 03 years from the said communication dated 19.05.2005; which had set the limitation period running, the same is clearly barred by limitation and ought to be consequently dismissed.

13. This conclusion is buttressed by a plain reading of the provisions of Article 54 of the Schedule to the Indian Limitation Act, 1963, which postulates that for specific performance of a contract the period of limitation is three years from the date fixed for its performance; or, if no such date is fixed, from the date when the plaintiff has notice that performance is refused. In this behalf, reliance may also be placed on the decision of the Hon'ble Supreme Court of India in ***Janardhanam Prasad Vs. Ramdas*** reported as (2007) 15 SCC 174, wherein it was observed as under:

> *"8. Applicability of the provisions of Article 54 of the Limitation Act must, therefore, be determined having regard to the aforementioned factual matrix in mind. It reads as under: "For specific performance of a contract Three years The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."*
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> *9. The Court, in applying the period of limitation, would first inquire as to whether any time was fixed for performance of agreement of sale. If it is so fixed, the suit must be filed within the period of three years, failing which the same would be barred by limitation. Here, however, no time for performance was fixed. It was for the Courts to find out the date on which the plaintiff had notice that the performance was refused and on arriving at a finding in that behalf, to see whether the suit was filed within three years thereafter."*

14. Before parting with this order, we would also like to observe that no other submission was made on behalf of the appellant, who appears in person; and as recorded by the learned Single Judge in the

impugned judgment and order dated 24.11.2014, has categorically refused to accept the refund of the advance amount of Rs.20 lakh paid by him to the respondent-company, along with interest thereon @ 9% per annum till the date of its payment.

15. In view of the foregoing, the appeal is devoid of any merit and the same is accordingly rejected.

SIDDHARTH MRIDUL, J
(JUDGE)

DEEPA SHARMA
(JUDGE)

NOVEMBER 30, 2017
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