

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**C.R. No. 60 of 2018**

Ashok Kumar Shrivastava S/o Late Shri Ayodhya Prasad Shrivastava, Aged About 61 Years Caste Kayasth, R/o Village- Pali, Police Station- Pali, District- Korba, Chhattisgarh.

---- Applicant**Versus**

Bhaiyalal Jaiswal S/o Late Shri Mannulal Jaiswal, Aged About 59 Years Caste- Jaiswal, R/o Village- Pali, Tahsil And P. S. Pali, District- Korba, Chhattisgarh.

---- Non-applicant

For Applicant:	Shri Dharmesh Shrivastava, Advocate.
For Non-applicant:	None.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****06.07.2018**

1. Heard on admission.
2. This Revision Petition has been preferred by the defendant under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') against the Order dated 16.03.2018 passed by Additional District Judge, Katghora, District-Korba (C.G.) in Civil Suit 01-B/2017, by which, the trial Court while entertaining the application filed under Order 7 Rule 11 of CPC has rejected the same.
3. Shri Dharmesh Shrivastava, counsel for the applicant submits that the order impugned as passed by the trial court is apparently contrary to law. He submits further that by virtue of terms and conditions as stipulated in agreement of sale dated 24.11.2011 the permission was required to be obtained by the defendant from the Collector by 31.03.2012 and since the

said time was not extended further, therefore, the suit as framed and instituted by the plaintiff for specific performance of contract on the basis of alleged agreement to sale on 19.01.2017 is specifically barred by time and without considering the said material fact in its proper perspective, the trial Court has committed an illegality in rejecting his application for rejection of the plaint. In support, Shri Dharmesh Shrivastava, counsel for the applicant, placed his reliance upon the principles led down in the matter ***“Padmakumari and Ors. Vs. Dasayyan and Ors. reported in (2015) 8 SCC 695”***

4. I have heard learned Counsel for the Applicant and perused the entire record carefully.

5. The plaintiff has instituted a suit claiming specific performance of contract on the basis of an agreement to sale, dated 24.11.2011 purported to have been executed between the parties. According to the terms and conditions stipulated therein, the permission was required to be obtained by the defendant/vendor from the competent authority by 31.03.2012 and the rest of the sale consideration was thereafter required to be paid by the plaintiff at the time of registration of the sale deed. The main contention as raised by counsel for the applicant that since the time for obtaining permission was not extended and therefore, the suit as framed in the year 2017, much beyond the prescribed period of three years is apparently barred by time is however noted to be rejected. Here in the instant case, the permission was required to be obtained by the defendant/vendor from the competent authority in order to sale the property in question by 31.03.2012 and therefore, the principles laid down in ***“Padmakumari and Ors. Vs. Dasayyan and Ors”*** (Supra) would not come as a rescue for the

defendant. As in the said matter, the plaintiff himself was required to pay the rest of the sale consideration within a period of nine months which he failed to deposit the same and said fact was determined after examining the evidence of the parties. Therefore, no reliance as such could be placed on the basis of said decision while entertaining the application for rejection of plaint under Order 7 Rule 11 of CPC particularly when the evidence of both the parties is yet to be recorded. In such circumstances, it cannot be held at this preliminary stage that the suit as framed and instituted is barred by time. While entertaining the application for rejection of plaint under Order 7 Rule 11 of CPC, the plaint averments alone are required to be seen and, the trial Court upon due consideration of plaint averments has rightly rejected the said application. The prima-facie findings of the trial Court, under such circumstances, cannot be held to be unsustainable at this stage.

6. In view of the foregoing discussions, I do not find any substance in this revision. The revision petition is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE