

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

3 CIVIL REVISION APPLICATION NO. 7 OF 2018

1) Shaligram Ananda Patil
Age: 70 years, Occu.: Agril.

2) Bharat Ananda Patil
(since deceased through his Lrs.)

2A) Yogesh Bharat Patil
Age: 38 years, Occu.: Agril.

2B) Jayesh Bharat Patil,
Age: 35 years, Occu.: Agril.

2C) Sunandabai Bharat Patil
Age: 55 years, Occu.: Agril,

All through G.P.A.holder

3) Shivaji Ananda Patil
Age: 65 years, Occu.: Retired,
All R/o.Pailad, At/Post/Tal.Amalner,
Dist.Jalgaon.

..Applicants

VERSUS

. Dilip Harakchand Jain
Age: 50 years, Occu.: Business,
R/o.Dhule Road, At/Post/Tal.Amalner,
Dist.Jalgaon.

..Respondent

...

Advocate for Applicants : Mr.Pawar Pawan B.
Advocate for Respondent : Mr.R.R.Sancheti h/f.
Mr.R.R.Mantri

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CORAM : M.S.SONAK, J.
DATE : 29.1.2018

ORAL JUDGMENT:-

1) This civil revision application challenges order dated 28.11.2017 by which the learned Trial Court has dismissed the applicants' application under Order 7 Rule 11(d) of the Code of Civil Procedure.

2) The learned counsel for the applicants submits that from reading of the plaint, it is clear that suit for specific performance was barred by law of limitation. He points out that the agreement in this case is dated 29.12.2010. The agreement itself indicates that time or essence of the sale formality has to be completed within nine months i.e. 29.9.2011. He submits that the Suit which is instituted on 21.10.2015 is *ex-facie* and barred by law of limitation. He relied on *Shri Veershaiv Co-operative Bank Ltd. Vs. Arvind Daulu Patil [2005 (4) MAH.L.J., 268]* and *Hardesh Ores P.Ltd. Vs. Hede and*

Company [2007 (5) MAH.L.J. (SC) 577].

3) In the present case, from the perusal of the plaint, it cannot be said that from the statement of the plaint, it is crystal clear that the Suit stands barred by limitation. The agreement of which specific performance is applied for, no doubt, makes reference to nine months within which the sale formalities are to be completed. However, there appears no dispute that sell require prior permission from certain authorities before the same could be effected. The permission was rejected some time in 2014. The issue as to whether the time or essence of the contract itself is arguable issue. In any case, at the stage of application under Order 7 Rule 11(d) of the Code of Civil Procedure what is relevant is averments in the plaint and not the defence. As long as the averments in the plaint do not attract clear bar of limitation, there is no question of exercising of powers under Order 7 Rule 11 (d) of the Code of Civil Procedure. The issue of

limitation in the present case at the highest is a mixed question of law and facts. Therefore, there is no case made out to interfere in the impugned order made by which the Trial Court has declined to invoke the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure and rejected the plaint.

4) The decision in **Shri Veershaiv Co-operative Bank Ltd.** (supra), is related to framing of preliminary issue. A preliminary issue is usually framed on the basis of the defence raised in the written statement. Parties were also permitted to lead evidence in support of preliminary issue. The position as regards exercise of powers under Order 7 Rule 11(d) of the Civil Procedure Code is quite different. In such a case, the defence is quite irrelevant.

5) In **Hardesh Ores Pvt.Ltd.** (supra) is the only authority for the proposition that law of limitation is

also law for purposes of Order 7 Rule 11(d) of the Code of Civil Procedure. This Judgment otherwise holds that for exercise of power under Order 7 Rule 11(d), averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety, a decree would be passed. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The authority infact assists the respondent rather than the applicants.

6) For the aforesaid reasons, this civil revision application is dismissed.

7) There shall be no order as to costs.

8) It is clarified that observations now made in this order are limited for the purpose of deciding applicant's application under order 7 Rule 11(d) of the Code of Civil Procedure. Therefore, the Trial Court need not be influenced by such observations while deciding Suit including issue of limitation on its own merits and in accordance with law.

[M.S.SONAK, J.]