

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
CIVIL REVISION APPLICATION NO. 207 OF 2017

- 01 Smt. Pushpabai wd/o Chavdas Dhake  
80 yrs. occ. household  
r/o Gat No. 9, Plot No. 2,  
Talele Colony, Near Water Fall  
Old Khedi Road, Jalgaon,  
Tq. & Dist. Jalgaon.
- 02 Dattatray s/o Chavdas Dhake  
age 53 years, occ. agri.  
r/o Mamurabad,  
Tq. & Dist. Jalgaon
- 03 Sou. Kamal w/o Padmakar Rane  
age 60 years, occ. household  
r/o Shani Peth, Opp. shani Mandir  
Jalgaon, Tq. & Dist. Jalgaon
- 04 Ramdas Laxman Dhake  
(Deceased through LRs)
- a) Jaubai wd/o Ramdas Dhake  
age 60 years, occ. household
- b) Milind s/o Ramdas Dhake  
age 37 years, occ. agril.
- c) Nilesh s/o Ramdas Dhake  
age 28 years, occ. agri.
- a, b, c above r/o Mamurabad  
Tq. & Dist. Jalgaon
- d) Anjali w/o Manoj Patil  
age 32 years, occ. household  
r/o Kasamwadi,  
Tq. & Dist. Jalgaon
- 05 Sou. Shevantabai w/o Shankar Chirmade  
age 92 years, occ. household  
r/o Asoda, Tq. & Dist. Jalgaon

06 Shobha w/o Kamlakar Choudhari  
age 58 years, occ. household  
r/o Satkar nagar Behind Hotel Ashok  
Sorti Mala, Ambad Road,  
Jalna, Tq. & Dist. Jalna

Applicants

Versus

01 Vasant s/o Rajaram Dhake  
age 54 years, occ. advocate

02 Smt. Anita wd/o Arun Dhake  
age 43 years, occ. househodl

Ku. Kiran d/o Arun Dhake  
age 20 years, occ. education

Ku. Dipika d/o Arun Dhake  
age 19 years, occ. education.

All r/o Asode, Tq. & Dist. Jalgaon

03 Ramesh s/o Raghunath Dhake  
age major, occ. Retd.  
r/o Gayatri Apt. Flat No. 7  
Damani Nagar, Solapur  
Tq. & Dist. Solapur.

04 Gopinath s/o Raghuanth Dhake  
age major, occ. Retd.  
r/o Ayodhya nagar,  
Jalgaon  
Tq. & Dist. Jalgaon

05 Purshottam s/o Raghunath Dhake  
age major, occ. service  
r/o Rachna Colony, Jalgaon  
Tq. & Dist. Jalgaon.

Respondents

Mr. A.M. Gholap, advocate for applicants.

Mr. S.P. Shah, advocate holding for Mr. V.P. Patil, advocate for respondent no. 1.

**CORAM : M.S.SONAK, J.**

**DATE : 19<sup>h</sup> January, 2018.**

**ORAL ORDER :**

1            This Civil Revision Application takes exception to the order dated 27.10.2017, by which the learned Trial Judge has dismissed applicants' application under Order VII Rule 11 of the Code of Civil Procedure, for rejection of the plaint.

2            Such application was taken out urging the following two points:

(A)    That, the plaint discloses no cause of action and, therefore, warrants rejection under Order VII Rule 11 (a) of the Code of Civil Procedure;

(B)    That, on the basis of a statement in the plaint, suit is barred by law of limitation and, therefore, plaint warrants rejection under Order VII Rule 11 (d) of the Code of Civil Procedure;

3            Mr.Gholap, learned Counsel for the applicants submits that in all such matters, there has to be a meaningful reading of the plaint. He submits that, merely because some illusion of cause of action may have been created on account of clever drafting, that,

by itself, is no reason for not rejecting the plaint under Order VII Rule 11(a) of the Code of Civil Procedure, when in fact no cause of action is disclosed. He submits that purported cause of action in this case relates to specific performance of an agreement executed in the year 1959 by the grandfather of the defendants in favour of grandfather of plaintiffs. He submits that there is absolutely no explanation in the plaint, as to how any alleged cause of action survives at this point of time. He submits that on meaningful reading of the plaint, there is no disclosure of cause of action and, therefore, the plaint ought to have been rejected.

4           Mr.Gholap further submits that from the reading of the averments in paragraphs 6, 7 and 11 of the plaint, it is very clear that the suit is barred under article 54 of the Schedule to the Limitation Act, which *inter alia* provides that where no date is fixed for specific performance, the cause of action will accrue when the plaintiff has noticed that the performance is refused. He points out that in paragraph 6 of the plaint, it is clearly pleaded that the plaintiffs made several requests to the defendants for specific performance, however, same did not fructify. He submits that in paragraphs 7 and 11, the plaintiffs have intentionally made reference to certain provisions of Tenancy Act and on the said basis, urged that the requirement of prior permission from the authorities for effecting sale, was deleted with effect from 11.02.2014. Mr.Gholap points out that the requirement of permission was deleted sometime in the year 2002. Since the agreement contemplated execution of sale deed within 15 days from the date of permission, this date is now to be construed as within fifteen days from the date of deletion of requirement for

obtaining permission. Thus construed, Mr.Gholap submits that from the statement in the plaint, it is apparent that the suit is hopelessly barred by law of limitation as prescribed in Article 54 of the Schedule to the Limitation Act, 1963.

5           Upon consideration of submissions of Mr.Gholap and after perusal of plaint as well as the impugned order, though the contentions raised by Mr.Gholap may warrant issue of limitation to be framed as an issue, this is really not a case warranting rejection of plaint by exercising powers under Order VII Rule 11 of the Code of Civil Procedure. The learned Trial Judge has rejected the application upon detailed analysis and there is really no jurisdictional error found so as to warrant interference. There is difference between '*there exists no cause of action*' and '*failure to disclose cause of action*'. It is only in the later category, provisions of Order VII Rule 11(a) of the CPC are attracted. If, after assuming that all the averments made in the plaint are correct, no cause of action is still disclosed, then, certainly the plaint can be rejected under Order VII Rule 11 (a) of the Code of Civil Procedure. However, if that is not the position, then, the exercise of powers under Order VII Rule 11(a) of the CPC, is not warranted. At this stage, the Court has to focus upon the averments in the plaint. No doubt, there has to be meaningful reading of the plaint to assess whether only an illusion of cause of action has been created where in fact no cause of action has been disclosed.

6           In the facts of the present case, the plaintiffs relied upon the agreement of the year 1959 about which there does not seem to be much dispute. The plaintiffs claimed that despite

demand in the year 2014, such agreement do not fructify into sale even though the requirement of prior permission from the authorities no longer sustains. Since the agreement of 1959 had not specified the time limit for specific performance , the issue, as to whether time was the essence of the contract, clearly arises. Therefore, upon reading of the plaint, it cannot be said that there is failure to disclose cause of action. If the cause of action can be made good or not, whether in reality, cause of action exists or not are all matters which are to be left to the trial. At this stage, suffice it to note that this is not a plaint where there is failure to disclose cause of action.

7           Insofar as issue of limitation is concerned, once again it is required to be noted that the agreement of 1959, did not fix any specific period for its performance. The averments made in the plaint indicate that the defendants, from time to time, gave assurance for performance. There is an averment that in the year 2014, a specific notice was issued and since no performance was forthcoming, the suit came to be instituted in the year 2014 itself. The issue, as to whether the cause of action starts within 15 days from the year 2002 or from the year 2014, is, at the highest, an arguable issue. Again, considering restrictive scope of proceedings under Order VII Rule 11 of the Civil Procedure Code, it cannot be said that there is any failure to exercise jurisdiction on the part of the learned Trial Judge in not rejecting the plaint on this ground. In this case, question of limitation, at the highest, is stated to be a mixed issue of law and facts.

**India Staff Association**, (2005) 7 SCC 510, the Hon'ble Supreme Court has held that if on the basis of statement in the plaint, there is no doubt that the suit stands barred by limitation, then, the plaint can be rejected under Order VII Rule 11(d) of the Civil Procedure Code. However, if the issue is doubtful or admixture of two or more solutions or answers, then, it may not be appropriate to exercise power under Order VII Rule 11(d) of the CPC.

9           Learned Counsel for the applicants has relied upon **Samar Singh Vs. Kedar Nath and others**, AIR 1987 SC 1926, in support of the proposition that a plaint can be rejected even after settlement of issues. In this case, the trial Court has not rejected the applicants' application under Order VII Rule 11 of the CPC on the ground that the issues have already been settled. Therefore, this decision is of no assistance to the applicants. To the same effect is the decision in **Mohan Chandra Tewari Vs. Harish Chandra Bhandari**, AIR 2003 Uttaranchal 10, in which it is held that an objection under Order VII Rule 11 of CPC can be raised at any stage of the proceedings. In **T. Arivandanam Vs. T.V. Satyapal**, 1977 AIR 2421, the Hon'ble Supreme Court has held that powers under Order VII Rule 11 of CPC have to be exercised upon meaningful reading of the plaint and merely because, clever drafting may have created illusion of cause of action, the Court must not be swayed by such illusion. In this case, as noted earlier, there is no illusion of cause of action but, cause of action has indeed been disclosed in the plaint.

10           Learned counsel for the applicants relied upon **Suresh Kumar Dagala Vs. Sarwan and another**, 2016(4) All MR 487(SC),

to submit that limitation is already one of the grounds for rejection of plaint under Order VII Rule 11(d) of the CPC. There is and there can be no dispute, however, as noted earlier, if from the averments in the plaint it is clear that the suit is barred by limitation, then, only power under Order VII Rule 11(d) of the CPC can be exercised. If the issue of limitation is arguable issue, then, it will not be proper to exercise power under Order VII Rule 11(d) of the CPC. Learned counsel for the applicants has also relied upon **SNP Shipping Services Pvt. Ltd. and others Vs. World Tanker Carrier Corporation and another**, 2000(2) Mh.L.J. 570; and the decision in **Ravindra Sakharampant Kulkarni and another Vs. Suresh s/o Uttamrao Kulkarni and others**, (Civil Revision Application No. 131/2016), decided on 9<sup>th</sup> February, 2017, to submit that a plaint can be rejected if there is an abuse of process of law. Such a ground cannot be made by the applicants and therefore, these decisions are of no assistance to the applicants. Finally, learned counsel for the applicants has relied upon **Mrigendra Singh Vs. Sohan Raj Surana and others**, AIR (Raj) 2016 648, to submit that not disclosing of cause of action gives clear right to sue for rejection of plaint and further omission to state material facts is also a good ground for rejecting the proceedings at the threshold. In the facts of the present case, none of these propositions are attracted.

11 For the aforesaid reasons, this Revision Application is dismissed. There shall be no order as to costs. It is, however, clarified that the observations in the impugned order as also in the present order are for the limited purpose of deciding the application under Order VII Rule 11 of the CPC. Therefore, such

observations need not influence the learned Trial Judge while deciding the suit including the issue of limitation on its own merits and in accordance with law.

**M.S.SONAK**  
**JUDGE**

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