

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 205 OF 2013

Dattu Mukunda Phadol & Ors. ...Applicants

Versus

Ashok Shravan Sonje & Ors. ...Respondents

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Mr. P.J. Thorat for the Applicants.
Ms. Smita R. Gaidhani for Respondent No.1.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 08, 2018**

P.C. :

1. This Civil Revision Application is directed against the order dated 16th October, 2012 passed by the learned Civil Judge, Senior Division, Nashik thereby rejecting the application below Exhibit 17 filed by defendant nos. 3,5, and 10 i.e., applicants under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the C.P.C.")

2. On 20th June 2011, respondent no.1 / original plaintiff has filed a suit for specific performance on the basis of Agreement of

Sale dated 2nd October, 1996. Hence, the defendants have taken objection that the suit is not filed within a period of three years from the date of cause of action and hence, it is to be rejected on the ground of limitation under Order VII Rule 11(d) of the C.P.C.

3. The learned Counsel for the applicants has submitted that from the pleadings it can be easily gathered that the defendants did not want to execute the Sale Deed in favour of the plaintiff. The plaintiff whenever contacted the defendants, they refused to execute the Sale Deed and the plaintiff himself in the plaint has mentioned the relevant period. The entire transaction was to be completed within a period of six months as per Agreement dated 2nd October, 1996 and the entire consideration amount of Rs. 6,25,000/- was paid on 18th August, 1997. He has further submitted that the plaintiff himself said that he was aware that the defendants were not interested in executing the Sale Deed. The learned Judge of the trial Court has taken a wrong view in holding that the point of limitation being a mixed question of law and fact, cannot be decided at this stage, but it is to be decided on evolution of evidence at the time of final hearing of the suit. The view taken by the trial Court that the refusal and avoidance are two different

acts is not correct. In support of his submission, he relied on the judgment of Delhi High Court in the case of ***Chet Ram Vashisht (since deceased) thr. L.Rs v. Ram Chander Goel and another*** reported in ***AIR 2000 Delhi 96***.

4. The learned Counsel for respondent no.1 opposed this Application and supported the order passed by the learned Judge of the trial Court.

5. Heard submissions. Perused the impugned order so also the plaint. Whether the plaint is to be rejected under Order VII Rule 11 (d) of the C.P.C. or not, the Judge has to consider only pleadings in the plaint. In the present case, the date of the Agreement, final payment and filing of the suit are not disputed. The suit is filed after 15 years. The entire payment was also paid by the plaintiff and possession was handed over to the plaintiff. It is pleaded in number of paragraphs that the plaintiff has approached the defendants and requested for execution of the Sale Deed, however, they avoided for the same. The learned Judge of the trial Court has taken view that the avoidance cannot be termed as "refusal". I do not find any illegality in taking this

view. It all depends on how the plaint worded and what is the nature of the transaction between the parties. In some cases, the avoidance may consider as “refusal”. In the case of **Chet Ram Vashisht (since deceased) thr. L.Rs** (*supra*), the learned Single Judge of the Delhi High Court was dealing with Article 54 of the Limitation Act. However, it was in the Second Appeal. The Single Judge has taken a view that if the purchaser is put off by another, it amounts to refusal of the performance of the agreement. I am of the view that this observation made by the learned Single Judge of the Delhi High Court may be true in that case, as it is a Second Appeal. However, in the present case, this being an application filed under Order VII Rule 11 (d) of the C.P.C. where the pleadings can be only considered. Considering the nature of the transaction, it cannot be said that it is a refusal on the part of the defendants and, therefore, the suit is barred under the limitation. The issue of limitation can be settled under Order 14 Rule 1 of the C.P.C. depending on the defence taken by the defendants.

6. With this, Civil Revision Application is dismissed.

(MRIDULA BHATKAR, J.)