

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

CIVIL REVISION APPLICATION NO. 174 OF 2017

Manohar Raghunath Bidkar (since deceased
through legal heirs) :

Sharada Manohar Bidkar & Ors.Applicants

V/s.

Ramprakash Bhimrao Sonakul & Ors.Respondents

Mr. Vilas B. Tapkir for the applicants.

CORAM : MRS. MRIDULA BHATKAR, J.

DATED : 18TH JUNE, 2018.

P.C.:

. In this Civil Revision Application, the order dated 26th October, 2016 passed by the 4th Joint Civil Judge, Senior Division, Pune in Special Civil Suit No.76 of 2014 below Exhibit 26 is challenged.

2. The applicants are the original defendants and respondents are the plaintiffs who filed the suit for specific performance of the contract. The challenge was given on the point of maintainability of the suit by the applicants on the ground of limitation. The learned counsel for the applicants has submitted that the suit is based on the contract dated 27th July, 1999 for the specific performance. On 26th February, 2002,

the applicants/defendants gave notice to the respondents/plaintiffs and have terminated the important contract. However, the suit was not filed within three years thereafter, but the suit was filed in the year 2013. Hence, barred by limitation.

3. Perused the plaint and impugned order. Whether by notice dated 02/11/2002, the contract was terminated or not so also how the cause of action was available to the plaintiffs when the plaintiffs filed suit for specific performance of contract in the year 2013 can be answered after considering the evidence of the parties. Issue of limitation is the mixed question of facts and law and hence, I am of the view it is appropriate for the Trial Court to formulate a separate issue under the limitation under Order 14 of the CPC. The said issue is kept open and it is to be decided afresh after leading evidence by both the parties. No interference is required in this matter. Hence, Civil Revision Application is dismissed.

(MRS. MRIDULA BHATKAR, J.)