

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10158 OF 2012

Shri Bhausahab Dattu Kadam	... Petitioner
v/s	
Shri Vinod Dilipkumar Majethiya and ors.	... Respondents

Ms Divya Parab I/b Mr R.N. Gite for Petitioner.
Mr. Akshay Purkar i/b Mr Sandeep D. Shinde for Respondent No.1s.

CORAM : B.P. COLABAWALLA, J.

DATE : 10th DECEMBER, 2018

P.C.:

1. This Writ Petition has been filed challenging the order passed by the Trial Court dated 2nd July 2012 (below Exh.120) in Special Civil Suit No.561 of 2011. Exh.120 was an application filed by the Petitioner (original Defendant No.1) under Order 7 Rule 11(d) of the C.P.C. for rejection of the plaint. The application pleaded that the plaint ought to be rejected on the ground that it was barred by the law of limitation.

2. After hearing the respective parties, the Trial Court came to the conclusion that from the averments in the plaint, it appears that the Suit was filed within limitation. In any event, it was held that whether the relief of specific performance of the contract was barred by limitation or otherwise was a mixed question of fact and law and which would require evidence. Therefore, it would not be proper to record any finding whether the Suit was within limitation or not. It is in these circumstances that the Application under Order 7 Rule 11(d) of the C.P.C. was rejected by the Trial Court.

3. After hearing the learned counsel for the parties, I do not think that any interference is called for under Article 227 of the Constitution of India. This is for the simple reason that if Defendant No.1 suffers a decree, then under section 105 of the C.P.C., the Petitioner is always at liberty to contend that the Suit was barred by limitation when he challenges the final decree. This being the case, I do not think that any interference is called for in the impugned order.

4. Writ Petition is accordingly dismissed. However, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)