

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

CIVIL REVISION APPLICATION NO. 1134 OF 2012

Thyssen Krupp Electric Steel
India Private Limited

...Applicant

Versus

Shri. Dwarkanath Motilal Mundadaa & Ors. ...Respondents

.....

Mr. M.M. Sathaye for the Applicant.
Mr. Sandip Shinde for the Respondents.

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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 25th September, 2012 passed by the learned Civil Judge, Senior Division, Nashik below Exhibit 23 in Special Civil Suit No. 343 of 2010 thereby dismissing the application, which was filed by defendant no.6 i.e., the applicant.

2. The applicant i.e., defendant no. 6 has moved an application under Order VII Rule 11 of the Code of Civil Procedure contending that the plaint to be rejected, as it is undervalued and also beyond the limitation. The trial Court has framed two issues on the point

of limitation and valuation of the suit property. The trial Court has held that the suit is filed within limitation and the valuation of the suit property is properly valued. Hence, this Civil Revision Application.

3. The learned Counsel for the applicant has submitted that the plaintiff is seeking declaration of cancellation of the Sale Deed and, therefore, he should pay the court fees on the basis of the consideration value of the said Sale Deed. He has further submitted that in view of the relief of declaration claimed by the plaintiff, the suit is covered under Article 58 of the Limitation Act, so when not filed within 3 years, is time barred.

4. The learned Counsel for the respondents has supported the order passed by the learned Judge of the trial Court and has submitted that the suit is not undervalued. He has relied on the judgment of Single Bench of this Court **dated 15th July, 2015 in Civil Revision Application No. 350 of 2015** in the case of ***Shri Vikas Vinayak Bhadale Vs. Shri Nivrutti Mahadu Sonmale*** and others and also on the judgment of Hon'ble Supreme Court in the case of ***Ravindra Narayan Rajarshi Vs. Rohini Ganpatrao***

Heblikar reported in **(2017) 0 Supreme (Mah.) 1055**. He has further submitted that the issue of limitation is a matter of fact and law and, therefore, after recording the evidence, the Court will be in a position to decide whether the suit is within limitation or not. However, the view taken by the learned Judge of the trial Court that the suit is within limitation when the application filed under Order VII Rule 11 of the C.P.C. is correct. He has further submitted that the plaintiff is in possession of the suit property. He is not a party to the execution of the Sale Deed, which is under challenged and, therefore, the ratio laid down in the case of **Suhrid Singh Vs. Randhir Singh & Ors.** reported in **(2010) 12 SCC 112** is directly applicable to the present case.

5. Heard submissions. Perused the impugned order. I place reliance on the judgments referred by the learned Counsel for the respondents on the point of valuation. Taking into account the pleadings and prayers, the learned Judge of the trial Court has rightly held that the suit is not undervalued. The trial Court will be in a better position to decide the issue of limitation as to whether Article 65 is attracted or it is covered under Article 58 of the Limitation Act, after recording the evidence of the parties. The

issue of limitation being a mixed question of law and fact is kept open. This issue can be framed under Order 14 Rule 1 of the C.P.C. and it is to be decided by the trial Court.

6. With this, Civil Revision Application is disposed of.

(MRIDULA BHATKAR, J.)