

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

CIVIL REVISION APPLICATION NO. 135 OF 2017

Krushna @ Kisan D. Gaikwad & Anr. ...Applicants

Versus

Mrs. Rupali Mahesh Gaikwad & Anr. ...Respondents

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Mr. Amey Deshpande for the Applicants.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 19, 2018**

P.C. :

1. This Civil Revision Application is directed against the order dated 17th November, 2016 passed by the learned 4th Jt. Civil Judge, Sr. Division, Pune thereby rejecting the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the C.P.C.). The applicants, who are the original defendants, have moved an application for rejection of the plaint on the ground that the suit is not maintainable in view of Section 16 (c) of the Specific Relief Act, 1963 (hereinafter referred to as "the said Act).

2. The learned Counsel for the applicants has submitted that the suit is barred under Limitation Act, as defendant nos. 1 and 2,

who are the vendors of the suit property, have cancelled the Power of Attorney in the year 2007. The original plaintiffs have suppressed this fact i.e., cancellation of Power of Attorney. He has further submitted that the original plaintiffs are asking for specific performance of an Agreement for Sale dated 12th June, 2007 and they have filed the suit in the year 2014 and, therefore, the suit is barred by limitation. As per settled principle of law, under Section 16 (c) of the said Act, it is necessary for the plaintiffs to plead readiness and willingness to perform the contract. In the plaint, there are bald averments and that cannot be taken into account. Defendant nos. 1 and 2 have executed the Power of Attorney in favour of Mahesh Govind Gaikwad and Anil Mahadeo Gaikwad, who are the husbands of the plaintiffs. The Power of Attorney Holders have executed an Agreement of Sale of the land in favour of their wife and there were *inter alia* transactions. He has further submitted that defendant nos. 1 and 2 have not received a single paisa out this Agreement of Sale, which was taken place in the year 2007. The order passed by the learned Judge of the Trial Court is erroneous and is to be set aside.

3. Considered submissions. Perused plaint. Also perused the

impugned order passed by the learned Judge of the Trial Court. It appears that in the plaint, there is specific pleading about readiness and willingness to perform the contract. Moreover, the objection raised by the defendants on the ground of maintainability is in fact defence taken by the defendants while dealing with the application filed under Order VII Rule 11 of the C.P.C. After careful reading of the pleadings in the plaint, the trial Court has to consider whether the suit is required to be rejected or not on the basis of the pleadings. The submissions of the learned counsel for the applicants in respect of Power of Attorney Holders and collusive Agreement for Sale executed between the plaintiffs and the Power of Attorney Holders of the defendants is a matter of defence, which cannot be taken into account at this stage. No interference is required in the order passed by the Trial Court. The issue of limitation also to be framed under Order 14 Rule 1 of the C.P.C. and that can be decided after leading evidence by both the parties.

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

(MRIDULA BHATKAR, J.)