

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (CAS) NO.67 OF 2018

IN

CIVIL REVISION APPLICATION (ST.) NO.16576 OF 2018

(Jaiprakash s/o Arjun Wankhade and others ..vs. Sudhakar Purnaji Wankhade)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.B. Gandhi, Counsel for the appellants.

CORAM : ROHIT B. DEO, J.

DATED : 14-12-2018

The non-applicant is served. There is no appearance on behalf of the non-applicant.

2. For reasons stated in the application, *inter alia* paragraph 2, the delay is condoned.

3. The application is disposed of accordingly.

Civil Revision Application No.174/2018.

Civil revision application challenges order dated 23-2-2018 passed by the learned 5th Joint Civil Judge (Junior Division), Akola in Regular Civil Suit 238/2017, by and under which the application preferred by the applicant-defendant under Order VII Rule 11 of the Civil Procedure Code for rejecting the plaint is dismissed.

2. The suit is for specific performance and permanent injunction.

3. The submission of the learned Counsel Shri J.B. Gandhi is that even if the plaint averments are accepted at face value, the claim for specific performance is time barred.

4. The learned trial Court has observed that the claim for specific performance is not barred by limitation. Needless to say, this observation shall not preclude the defendant from taking plea of limitation in the written statement. If such plea is taken in the written statement, the same shall be adjudicated by the trial Court on its own merits.

5. However, the further submission of Shri J.B. Gandhi that cause of action is not made out, cannot be countenance. Even if *arguendo*, it is assumed that there is substance in the submission that the claim for specific performance is time barred, it is trite law that plaint cannot be rejected in part. The plaint does disclose with particularity the cause of action for the relief of injunction.

6. Subject to the observations supra, I do not see any error in the ultimate conclusion arrived at by the trial Court.

7. The civil revision application is rejected.

JUDGE