

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 31 of 2019**

- Ramsharan Sharma S/o Shri Narmada Prasad Sharma Aged About 50 Years Caste Brahmin, R/o Ward No.01, Shankar Nagar, Mahasamund, District- Mahasamund, Chhattisgarh.....(Age Not Mentioned In Impugned Order).....(Defendant), **---- Applicant**

Versus

- Jitendra Idikar S/o Late Shri Khemrao Idikar Aged About 45 Years R/o Ward No.19, Clubpara Mahasamund, Thana Mahasamund, Tahsil And District- Mahasamund, Chhattisgarh.....(Plaintiff), **---- Respondent**

For Applicant : Shri Anumeh Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

Order on Board**09.12.2019**

1. Heard on admission.
2. This Revision Petition has been preferred by the defendant under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the legality and propriety of the order dated 12.03.2019 passed by the First Additional District Judge, Mahasamund in Civil Suit No. H-02B/2016 whereby the application filed by the applicant/defendant under Order 7 Rule 11 of CPC has been rejected.
3. Learned counsel for the applicant submits that the order impugned as passed by the trial Court rejecting the application filed under Order 7 Rule 11 of CPC is apparently contrary to law. According to him, the suit for specific performance of contract was instituted on 18.12.2015 based upon an agreement to sell dated 17.12.2012. The suit as framed is, therefore, apparently barred by time. However, without considering the said fact in its proper manner, the Court below has committed an illegality in rejecting the said application.

4. I have heard learned counsel for the applicant and perused the entire relevant papers annexed with the Revision carefully.
5. A suit for specific performance of contract was made by the plaintiff alleging, inter alia, that despite the execution of agreement to sell dated 17.12.2012, the defendant has failed to execute the registered deed of sale even upon receiving the notice dated 08.07.2015. The plaintiff has, therefore, been constrained to institute the suit in the instant nature. While denying the claim, it was pleaded by the defendant that the suit as framed is barred by time.
6. It appears further from the perusal of the record that during pendency of the suit and even after framing of issues, an application enumerated under Order 7 Rule 11 of CPC has been filed by the defendant seeking rejection of the plaint while raising an objection that the suit as framed and instituted on 18.12.2015, much after the prescribed period of limitation, is specifically barred by time. The plaintiff has opposed the said application.
7. The trial Court, after considering the said application, has rejected the same vide its order impugned by observing that the alleged question is a mixed question of law and fact and could be decided only after considering the evidence of the parties. It has been observed further that since the issue No.4 has already been framed in its aspect, therefore, the plaint cannot be rejected under Order 7 Rule 11 of CPC.
8. Considering the averments made in the plaint, vis-a-vis, the observation made by the trial Court rejecting the said application, I do not find any infirmity in the same.
9. The Revision Petition is accordingly dismissed at admission stage. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge