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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.179 OF 2019

Shilpa Traders & ors. ... APPLICANTS

VERSUS

Rajmudra Real Estate Pvt. Ltd. & ors. ... RESPONDENTS

.....
Shri Vijay B. Patil, Advocate for applicants

.....
CORAM: R.G. AVACHAT, J.

DATED : 7th OCTOBER, 2019

ORDER

. Heard learned counsel for the applicants. The challenge in this revision application is to the order dated 13.8.2019, passed by 7th Jt. Civil Judge, Junior Division, Jalgaon, rejecting the application (Exh.80) in Regular Civil Suit No.421/2012, moved for rejection of plaint, under Order VII Rule 11(d) of the Code of Civil Procedure. The applicants herein are the original defendants No.6 to 8 in the suit.

2. Shri Vijay B. Patil, learned counsel for the applicants would submit that, the suit has been barred by law of limitation. An application, therefore, was moved for rejection of the plaint. The application, however, came to be rejected. The learned counsel took me through the averments in the plaint to submit that the suit is barred by limitation. He has also relied on the following authorities :

- (i) Shakuntala S. Tiwari Vs. Hem Chand M. Singhania [1987 AIR (SC) 1823]
- (ii) Taherbhai T. Poonawala & ors. Vs. Hamid H. Patel (deceased) by L.Rs. & ors. [AIR 2007 BOMBAY 80]
- (iii) Fatehji and Company & anr. Vs. L.M. Nagpal & ors. [2015 AIR SCW 3401]
- (iv) K.S. Dhondy Vs. Her Majesty the Queen of Netherlands & anr. [2011 (7) ALL MR 196]
- (v) Shri Jayantilal Devji Shah (Haria) Vs. Mangesh Dasrath Gaikar & ors. [2018 (4) ALL MR 326]
- (vi) Gaurav s/o Balmukund Bhirad & ors. Vs. Tukaram Pandurang Dhagekar (Died) through his L.Rs. & ors. [2018 (5) ALL MR 772]

3. I have carefully considered the submissions made by learned counsel for the applicants. Also perused the authorities relied upon. Read the plaint.

4. The respondent No.1/ plaintiff claims to be a Company, registered under the Companies Act, 1956. The subject matter of the suit are three shop blocks, particularly described in para No.1 of the plaint. The plaintiff Company claims to have let out the suit shop blocks to the defendant No.1 – a partnership firm, before 1993 at a monthly rent of Rs.700/- per block. The defendants No.2 to 4 are stated to be the partners of the defendant No.1 firm. The suit has been filed for possession of the suit shop blocks and arrears of rent. The grounds on which the possession has been sought are – permanent construction, subletting etc. It is true that, the averments in the plaint indicate that the plaintiff firm has come with a case that the defendants No.1 to 5 have sub-let the suit shop blocks to defendants No.6 to 8 way back in the year 1993. The claim of arrears of rent also pertains to the period from 1998 to 2012.

5. The suit has been filed on 28.1.2011. It is true that, the limitation period for claiming possession of a premises by a landlord from the tenant is 12 years when the cause of action arise. It is also true that, claim for the arrears of rent for a

period three years next before the institution of the suit may be barred by limitation. It is also equally settled proposition of law that a tenant, in order to avoid eviction on the ground of arrears of rent is under obligation to pay entire rent due from him.

6. Be that as it may, the suit is dated 28.1.2011. The claim for arrears of rent is for the period from April 1998 to March 2010. The same indicates that, some of the claim for arrears of rent is for the period falling within three years next before the institution of the suit. The question is, how the plaint in its entirety is liable to be rejected when a portion of the claim is well within limitation.

7. In the case of **Madhav Prasad Aggarwal and Anr. Vs. Axis Bank Ltd., 2019 (7) SCC 158**, the Hon'ble Apex Court had held that the relief of rejection of plaint in exercise of powers under Order VII Rule 11(d) of Code of Civil Procedure cannot be pursued only in respect of one of the defendant(s) i.e. the plaint has to be rejected as a whole or not at all, in exercise of such power. If the plaint survives against certain defendant(s) and/or properties, Order VII Rule 11(d) of Code of Civil Procedure will have no application at all, and the suit as a

whole must then proceed to trial.

In the case of **Sejal Glass Ltd. Vs. Navilan Merchants (P) Ltd., (2018) 11 SCC 780**, it has been held :--

“If the plaint survives against certain defendants/ or properties, Order VII Rule 11(d) of Civil Procedure Code will have no application at all, and the suit as a whole must then proceed to trial.”

8. The case of Shri Jayantilal Shah (supra) relied upon by the learned counsel pertains to the rejection of the plaint filed for specific performance of agreement for sale of immovable property. The facts therein undoubtedly indicate that those suits were filed after the period of limitation for the suit for specific performance, was over. The authorities relied upon are distinguishable on facts.

9. It is reiterated that, perusal of the plaint in its entirety does not indicate that the claims made therein are in their entirety barred by limitation and, therefore, the plaint is liable to

be rejected. The trial Court has rightly rejected the application Exh.80. No interference is called for with the impugned order. The Civil Revision Application fails. The same is, therefore, dismissed.

(R.G. AVACHAT)
JUDGE

fmp/-