

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 106 OF 2019

Kadu Rustam Pale & others

VS.

Sau. Jebanbai w/o Raheman Surtane and others

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

Court's or Judge's

Shri. G. N. Shinde h/f. S. I. Gatte, counsel for applicant.

CORAM : MANISH PITALE J

DATED : 06.11.2019

By this application, the applicants (original defendants) have challenged order dated 17.07.2019 passed by the Court of Joint Civil Judge Junior Division Telhara (Trial Court), whereby application filed under Order VII, Rule 11 of C.P.C. by the applicants herein stood rejected.

2. The respondent No.1 filed a suit for specific performance against the applicants herein and other defendants. The impugned order shows that even earlier an application for rejection of plaint had been moved at Exh.13 and the same was rejected way back on 11.01.2013. The present application for rejection of plaint under Order VII, Rule 11 was moved by the applicants contending that suit was barred by limitation since the respondent No.1 was relying upon

on earnest note dated 24.04.1998, while suit was filed on 31.08.2012.

3. The Trial Court in the impugned order has observed that no doubt question of limitation does arise in the suit, but it is a mixed question of law and fact. Accordingly, the Trial Court, while rejecting the application filed by the applicants, has categorically observed that opportunity needs to be granted to the parties to lead evidence on the question of limitation. Accordingly, necessary issue of limitation has been framed while the application for rejection of plaint has been dismissed by the impugned order.

4. Bare perusal of the impugned order and facts noted therein show that no error can be attributed to the approach adopted by the Trial Court. The applicants herein even now have an opportunity to demonstrate, by way of leading evidence, that the suit filed by the respondent No.1 is barred by limitation.

5. In view of above, it is found that there is no merit in the present application and accordingly, it is dismissed.

JUDGE