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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION No. 39 OF 2015

Diana Buildwell Private Limited ... Applicant
Vs.
M/s. Sterling Holiday Resorts (India) Ltd. & Ors. ... Respondents

WITH

CIVIL REVISION APPLICATION No. 44 OF 2015

Starwood Hotels & Resorts India Pvt. Ltd. ... Applicant
Vs.
M/s. Sterling Holiday Resorts (India) Ltd. & Ors. ... Respondents

WITH

CIVIL REVISION APPLICATION No. 1 OF 2016

The Saraswat Co-operative Bank Ltd. ... Applicant
Vs.
M/s. Sterling Holiday Resorts (India) Ltd. & Ors. ... Respondents

Civil Revision Application No. 39/2015

Mr. Nitin Sardesai, Sr. Counsel with Rohit Bras De Sa , for the Applicant.

Mr. Shivan Desai, for Respondent No. 1.

Mr. U. R. Tamble, with Ms. Yadika Mandrekar a/w Ms. Gauri Govekar, for Respondent No. 3.

Civil Revision Application No. 44 of 2015

Mr. J. E. Coelho Pereira, Sr. Counsel with Vinod Korgaonkar, for the Applicant.

Mr. S. G. Desai, Senior Counsel Shivan Desai, for Respondent No. 1.

Mr. Nitin Sardesai, Sr. Counsel with Rohit Bras De Sa, for the Respondent No. 2.

Civil Revision Application No. 1 of 2016

Mr. U. R. Timble, with Ms. Yadika Mandrekar, Ms. Gauri Govekar, for Applicant.

Mr. S. G. Desai, Senior Counsel Shivan Desai, for Respondent No. 1.

Mr. Nitin Sardesai, Sr. Counsel with Rohit Bras De Sa, for the Respondent No. 2.

Mr. J. E. Coelho Pereira, Sr. Counsel with Vinod Korgaonkar, for Respondent No. 5.

CORAM : C. V. BHADANG, J.

DATE : JUNE 2, 2020

(Pronounced via Video Conferencing)

JUDGMENT :

1. The challenge in these civil revision applications, under S. 115 of the Code of Civil Procedure, 1908 (for short “CPC”) is to the common order dated 14th October, 2015 passed by the learned Civil Judge, S. D. Mapusa in Special Civil Suit No. 11 of 2015 / B. By the impugned order, three separate applications filed one each by defendant No. 1 (Exhibit D-11); defendant No. 3 (Exhibit D-24); and defendant No. 5 (Exhibit D-26), for rejection of plaint under Order VII, Rule 11(a) and (d) of CPC have been dismissed. In such circumstances, the civil revision applications are being disposed of by this common judgment.

2. The brief facts necessary for the disposal of the revision applications may be stated thus:

. That the first respondent M/s. Sterling Holiday Resorts (India) Ltd. (plaintiff) has filed the aforesaid suit, against the applicants for recovery of money and other reliefs. The case made out in the plaint is that the first respondent has sold the suit property, more

specifically described in plaint para 1 to Diana Buildwell Pvt. Ltd. (defendant No. 1) under registered sale-deed dated 11.5.2007 for a total consideration of Rs.55,11,00,000/- which was to be paid in the manner, as stipulated in the sale-deed. Indisputably, on the date of execution of the sale-deed, an amount of Rs. 49,11,00,000/- has been paid to the first respondent, which according to the first respondent was towards payment of part consideration. According to the first respondent, the balance consideration of Rs. 6,00,00,000/- was to be paid by the defendant No. 1 on the plaintiffs obtaining renewal of the construction license from the village Panchayat Anjuna on or before 12th December, 2007. The first respondent has obtained the renewal of construction license on 17.7.2007 and has complied with the obligation, under Clause 9 of the said sale-deed, as a result of which the consideration of Rs. 6 crores has become payable. In short, according to the first respondent, in spite of the first respondent complying with the stipulation, the first defendant has failed to pay the amount of Rs. 6 crores.

3. It may be mentioned that Sterling Woodhouse Hotels and Resorts India Pvt. Ltd. (defendant No. 5) has obtained rights to operate a hotel in the said property from the defendant No. 1 for a period of twenty years, under an agreement dated 18.8.2011. The original defendant Nos. 2, 3 and 4 are respectively the Yes Bank Ltd., Saraswat

Co-operative Bank Ltd., and Vijaya Bank, have granted financial assistance to the defendant No. 1 for purchase of the property.

4. The first respondent in the suit has *inter alia* prayed for a decree in the sum of Rs. 21,14,25,548/- including interest till 19th February, 2015 along with future interest and for declaration of a valid and subsisting charge on the suit property. The first respondent has also sought a declaration that any charge / or mortgage on the suit property created in favour of the original defendant Nos. 2 to 5 is subject to the prior charge of the unpaid price, created in favour of the first respondent.

5. The defendants have filed separate applications for rejection of the plaint under Order VII, Rule 11 (a) and (d) of CPC as aforesaid on the ground that the plaint does not disclose any cause of action and the suit is barred by limitation.

6. The applications were opposed by the first respondent. It is contended that there is a statutory charge of the unpaid purchase price in favour of the first respondent, which is the vendor, and the first respondent having complied with the stipulation in clause 9, there is clear cause of action, for filing the suit for non payment of the additional consideration, as agreed. It was contended that the first defendant refused to make the payment, lastly on 20th December, 2012,

and as such, the suit having been filed within three years thereafter i.e. in February, 2015, is well within limitation. It was contended that even otherwise, the issue of limitation is a mixed question of law and fact, and cannot be a ground for rejection of plaint, under Order VII, Rule 11 (d) of CPC.

7. The learned trial by the impugned order has dismissed the applications.

8. I have heard the learned counsel for the parties. Perused record.

9. Mr. Sardesai, the learned senior counsel for the petitioner in Civil Revision Application No. 39 of 2018 has submitted that the suit is clearly barred by limitation. It is submitted that bare reading of the plaint itself would make it clear that the work of obtaining of the renewal of the license was complete on 17.7.2007. It is submitted that the covenant to pay Rs. 6 crores was an additional covenant unconnected with the sale although it was mentioned in the sale-deed. It is submitted that the amount of Rs. 6 crores cannot be said to be part of the sale consideration and thus would not partake of the nature of unpaid purchase price, so as to have a charge on the property under Section 54 read with Section 100 of the Transfer of Property Act, particularly in the absence of a stipulation in the sale-deed itself that the non payment of Rs. 6 Crores would constitute a charge on the

property. It is submitted that clause 8 and 9 of the sale-deed are independent and distinct. There is no bar in including two distinct agreements in a single document. It is submitted the said amount was agreed to be paid as a consideration for the services rendered in obtaining the renewal of the license and thus the cause of action, if any, accrued in the year 2007 or latest on 20.10.2011 and the suit filed in February 2015 is clearly barred by limitation. It is submitted that the trial court failed to read the sale-deed as a whole and particularly clauses 4 and 5 where under, for a consideration of Rs 49,11,00000/- the property was transferred free of any encumbrance. According to the learned counsel, the suit claim would be governed by Article 18 of the Limitation Act. It is submitted that the principle ground on which the rejection of the plaint was sought was based on Order VII, Rule 11(d) of the Code that is the suit being barred by limitation. It is submitted that however the trial court has mainly gone on the ground that the pliant does not disclose cause of action which is referable to Order VII, Rule 11(a) of the Code.

10. Mr Pariera the learned senior counsel for the petitioner (defendant no 5) in Civil Revision Application No. 44 of 2015 has made submissions on similar lines. It is not necessary to repeat the same. It is submitted that the plaintiff has resorted to clever drafting in

creating an illusion of cause of action and in attempting to show that the suit is filed within limitation. It is submitted that the total consideration agreed was only Rs. 49,11,00,000/- which was paid and the property was absolutely transferred in favour of the defendant No. 1 free of any encumbrance. It is submitted that in any event there is no privity between the defendant no 5 and the plaintiff inasmuch as the petitioner has obtained rights to operate the hotel on the suit property under an agreement dated 18.8.2011 for a period of twenty years from the date of the opening of the hotel. It is submitted that the petitioner is a bonafide acquirer of rights, for value without notice of any alleged rights / encumbrance / charge on the said property in favour of the plaintiffs. It is thus submitted that in any event the plaintiffs have no cause of action as against the petitioner and the suit is barred by limitation.

11. On behalf of these petitioners reliance is placed on the decision of the Supreme Court in case of (i) ***ITC Ltd. Vs Debts Recovery Appellate Tribunal and Ors.***¹; (ii) ***Church of Christ Charitable Trust and Educational Charitable Society Vs Ponniamman Educational Trust***² and (iii) the decision of this Court in ***Agyarani Dua Vs Vidyagauri J Tripathi and Anr.***³; (iv) ***Mr. Selwyn***

¹ (1998) 2 SCC 70

² (2012) 8 SCC 706

³ 1998 (4) Bom.C.R. 844

Agnelo Botelho Vs Mr Nortan D'Souza and Anr.⁴; and (v) ***M/s. Cyrus Marine Services Vs K A Shivaraman***⁵ .

12. Mr. Timble the learned counsel for the petitioner (defendant No. 3) in Civil Revision Application No. 1 of 2016 has, apart from adopting the submissions on behalf of the other petitioners, submitted that the defendant No. 3 is a mere financier and thus there is no cause of action for the plaintiff against the petitioner. It is submitted that the trial court erred in holding that the petitioner is a proper and a necessary party to the suit. It is submitted that having regard to the nature of the dispute between the plaintiff and the defendant Nos. 1 and 5 the present petitioner can neither be a necessary nor a proper party to the suit. It is submitted the trial court thus erred in holding that the plaint discloses cause of action.

13. On behalf of the petitioner reliance is placed on the decision of the Supreme Court in *Church of Christ Charitable Trust and Educational Charitable Society (supra)* and ***Raghavendra Sharan Singh Vs Ram Prasanna Singh***⁶.

14. Mr. Sivan Dessai, the learned counsel for the first respondent has supported the impugned order. It is submitted that the

⁴ 2016 (2) Goa L.R. 354

⁵ Civil Revision Application No. 41 / 2015, dt. 13.1.2016

⁶ Civil Appeal No. 2960 / 2019, dt. 13.3.2019

plaint clearly “discloses cause of action” which is the requirement of law, as has rightly been noticed by the learned trial court. It is submitted that the recitals and the various covenants in the sale-deed read as a whole clearly show that the amount of Rs 6 crores was and is part of the consideration and would consequently represent unpaid purchase price, once the plaintiff obtained renewal of the licence. It is submitted that thus the non payment of the said amount gives rise to cause of action to file the suit which is clearly disclosed in the plaint. It is submitted that insofar as limitation is concerned, the defendant No. 1 had refused to pay the amount, lastly on 20.10.2012 and thus the suit filed in February, 2015 is well within limitation. It is submitted that in any event the suit involves disputed question as to interpretation of the recitals of the sale-deed which are material and therefore no case for rejection of the plaint under Order VII, Rule 11 of the Code is made out.

15. On behalf of the respondent No. 1, reliance is placed on the decision of the Supreme Court in (i) ***Ramesh B. Desai and Ors. Vs Bipin Vadilal Mehta and Ors.***⁷; (ii) ***The Rajasthan State Industrial Development and investment Corporation Vs. Diamond and Gem Development Corporation Ltd. & Ors***⁸; (iii) ***C Natarajan Vs Ashim***

⁷ AIR 2006 SC 3672

⁸ AIR 2013 SC 1241

Bai and Ors⁹; (iv) **Urvashiben and Ors Vs Krishnakant Manuprasad Trivedi**¹⁰; and the decision of this court in (v) **Dom Franscisco Flat Owners Co-op Housing Society Ltd Vs Alfran Construction Pvt Ltd.**¹¹ and the decision of the Allahabad High court in (vi) **Basant Lal and Ors. Vs Dwarka Prasad Varshney and Ors.**¹²

16. I have carefully considered the rival circumstances and the submissions made. The law relating to rejection of plaint under Order VII, Rule 11 of the Code is well settled. The court in such a case has to confine itself to the allegations in the plaint and the documents filed with it. The defense, actual or probable, cannot be considered at this stage. Insofar as these well settled principles are concerned, it is unnecessary to refer to any authorities, as it would be merely parading the familiar.

17. Coming to the present case, the suit claim is based on the premise that the amount of Rs 6 crores, represents unpaid purchase price and thus would be a charge on the property, in the hands of the defendant No. 1 and for the matter of that the defendant no 5. Insofar as defendant Nos. 2 to 4 are concerned, they are found to be necessary and proper parties to the suit by the learned trial court.

⁹ AIR 2008 SC 363

¹⁰ 2019 (1) ALL MR 483

¹¹ 2014 (5) ALL MR 813

¹² AIR 1978 All 436

18. It is undisputed that by the sale-deed dated 11.5.2007 the property as set out in Schedule I and II excluding the property in Schedule III has been sold by the plaintiff to the defendant No. 1. In order to appreciate the rival contentions, it is necessary to reproduce clause 4, 5(f) and (g), 8 and 9 of the sale-deed. While the plaintiff is principally placing reliance on clauses 8 and 9, the petitioners are placing reliance on clauses 4 and 5 of the sale-deed. The relevant clauses read as under:

- “4. From today, the SELLER ceases to have any right, title or interest of whatsoever nature, in the said Property no. 1 and 2 described in Schedule I and II excluding property described in Schedule III hereunder written and the PURCHASER, shall be acknowledged as the absolute owner and shall enjoy and possess the said property no. 1 and 2 except Schedule III property with the existing structures situated therein, without any interference of whatsoever nature from the SELLER or any one claiming through the SELLER.
- 5. The SELLER doth hereby covenants with the “Purchaser” as follows:
 - f. That this Sale Deed is executed in all its entirety and the SELLER has received all and full consideration of the sale price and all other charges payable to date in respect of the said property no. 1 ad 2, more particularly described in Schedule I and II excluding property described in Schedule III hereunder written in the manner aforesaid.

- g. That “SELLER” has now been left with no right, title, interest, claim or lien of any nature whatsoever in the said Property hereby conveyed and the same has become the absolute property of the “PURCHASER’ and the “PURCHASER’ shall and may at all times hereafter quietly and peacefully use, possess, enjoy, sell, gift, mortgage, lease and transfer the said Property no. 1 and 2, more particularly described in Schedule I and II excluding property described in Schedule III hereunder written and receive the rents and profits thereof without any demand, objection, interruption or claim by the “SELLER” or at the instance of any person or persons claiming under or through the “SELLER”.
8. The SELLER does hereby state that the Town and Country Planning Department has approved a total FSI area of 18,920.78 sq. mts to be constructed on the said property no.1 and 2 vide letter dated 05/12/1995 and the Village Panchayat Anjuna vide letter dated 13/09/1996 ref. no.VP/ANJ/911/96-97/15 granted permission for construction in accordance with the approval building plans. The said permission/ license was renewed by the Village Panchayat Anjuna Caisua vide letter dated 30.04.2005, for construction of Sterling Holiday Resorts at Vagator valid till 13.09.2007. The SELLER does hereby undertake that it shall obtain renewal of license for construction in their own favour from Village Panchayat Anjuna on or before 12/12/2007 and same shall be valid for minimum of two years i.e. till September 2009. The buyer do hereby agree that it will co-operate with the seller for getting the renewal for building approval.
9. The PURCHASER covenants with the SELLER that a sum of Rs. 6,00,00,000 (Rupees Six Crores only)

will be paid additionally towards consideration, if the SELLERS apply for and get the permission from the appropriate authorities, within the stipulated time stated in clause 8 hereinabove.”

19. It is undisputed that the plaintiffs / vendors have complied with the covenant as to obtaining of the renewal of the license on 7.7.2007. In such circumstances, two questions arise, firstly, whether the amount of Rs 6 crores forms part of the consideration so that it represents unpaid purchase price and consequently a charge on the property so as to afford cause of action to the plaintiffs to file the suit or it represents consideration for the services rendered by the plaintiff in obtaining the renewal of the licence. Secondly, whether the cause of action to file the suit arose in the year 2007 when the renewal was obtained or latest by 2011 (as claimed on behalf of the petitioners) in which case, according to the petitioners, the claim would be governed by Article 18 of the Limitation Act or it accrued on 20.12.2012 (as claimed on behalf of the plaintiff) when the defendant No. 1 first refused to make the payment.

20. Insofar as the first question is concerned, it is trite that the sale-deed has to be read as a whole in order to gather the real intention of the parties. This would be more so at the stage when the court is considering the question of rejection of the plaint. A conjoint reading

of the relevant clauses *prima facie* show that the amount of Rs. 6 crores was the additional consideration agreed between the parties on the plaintiffs obtaining renewal of the license within the stipulated time. The payment of the said additional consideration was thus contingent on the event of the plaintiff obtaining the renewal of the licence. It can, *prima facie*, be seen that should the plaintiff fail therein, the consideration agreed was Rs. 39,11,00,000/-. Thus, as on the date of the sale-deed (when the time for obtaining of such renewal and compliance with clause 9 was yet to arrive at) the parties were bound to record that the full title stood conveyed in favour of the defendant No 1. At that time there was no reason not to convey the clear and marketable title inasmuch as the amount of Rs 6 crores was agreed to be paid on the basis of a contingent event of the plaintiffs being successful in obtaining the renewal of the licence. In my considered view, if the relevant clauses are harmoniously read, *prima facie* the conclusion is inescapable that the amount of Rs 6 crores was by way of additional consideration, albeit, on the plaintiffs obtaining the renewal of the licence which they did. It is not possible to accept, at least *prima facie*, that the said amount was for the services rendered, as claimed on behalf of the defendant No 1. At any rate, the matter, in my considered opinion, turns upon the final interpretation, which can be placed on the recitals of the sale-deed as a whole in order to gather

the real intention of the parties, which is the test to be applied in such a case, which can only be done at the trial. Thus, it is not possible to hold that the plaint, does not disclose cause of action, so as to entail its rejection at the threshold.

21. A brief reference needs to be made to the case against defendant No. 5 and the defendant Nos. 2 to 4 in the context of the claim that there is no cause of action against them. Insofar as the defendant No 5 is concerned, it claims to hold rights to operate the hotel on the property for a period of twenty years from the date of opening of the same, under an agreement dated 18.8.2011. According to the defendant No. 5, there is no privity with the plaintiff. The defendant also claims to have obtained the said rights bonafide for valuable consideration and without notice. It is evident that such a case set up is part of the defense, which cannot be considered when deciding the issue of rejection of plaint. That apart, such a case has to be substantiated, which can only be done at the trial.

22. Insofar as defendant No. 3 is concerned, it is true that it has merely financed the original transaction. However considering the reliefs as sought in the suit, including a declaration, that the charge, in favour of these defendants, if any is subject to the prior charge of the plaintiffs, it is not possible to accept that the plaint does not “disclose”

cause of action against these defendants. The question whether the plaintiff would succeed in proving such charge is alien at this stage.

23. This takes me to the issue of limitation. It is true that this court in the case of *Mr. Selvin Botelho* (supra) has held that it is not in every case that the issue of limitation would be a mixed question of law and facts. Thus, there may be cases where the relevant facts having a bearing on the issue of limitation, may be admitted/ undisputed or clearly borne out of the record. In such a case the only exercise which the court would be required to make is to apply the relevant article and then decide whether the plaint can be said to be barred by limitation. In a given case, there may be a dispute, as to by which article of the Limitation Act, the suit is governed. According to the petitioners, in the present case there is no dispute as to relevant facts having a bearing on the issue of limitation and therefore, the determination on the point need not be postponed to the trial on the ground that it is mixed question of law and facts. It is not possible to accept the said contention. Once it is *prima facie* found that the amount of Rs 6 crores was part of consideration and not consideration for the services rendered (in obtaining the renewal of the license), Article 18 of the Limitation Act cannot apply. Insofar as the claim of unpaid purchase price is concerned, it is true that the renewal is

obtained in the year 2007. However, according to the plaintiffs the liability was denied in October, 2012 and thus, the suit filed in February, 2015 is within limitation. It appears from the record that the plaintiffs had issued a notice to the defendant No. 1 on 3.10.2012, claiming the said amount along with interest. The defendant No. 1 sent a reply on 20.10.2012 raising several contentions. It was *inter alia* contended that pursuant to the request of the plaintiffs and “subsequent understanding/ agreement”, arrived at between the parties, the defendant has already paid an amount of more than 6 crores towards settlement of the plaintiff's dues towards renewal of construction license, LIC and gratuity etc. It was also contended that there was a short fall of 570 sq. mts., in the property sold and the plaintiffs had agreed to deduct the value of the said area from the amount of rupees six crores. It can thus be seen that there is dispute on facts on all these aspects which can be gone into at the trial. It is necessary to note that under Article 53 of the Limitation Act (which governs a suit by a vendor of immovable property for personal payment of unpaid purchase money) the question is also about as to what is the time for completing the sale or where the title is accepted after the time fixed for completion, the date of the acceptance. In my considered view, the plaint also cannot be rejected as being barred by limitation at this stage. It is evident that the trial court can frame appropriate issue

which can be decided at the trial.

24. A brief reference may now be made to the cases cited on behalf of the parties. In *Agyarani Dua (supra)*, the suit was filed for declaration that the agreement of sale, which was abandoned in 1984, is of no consequence and for consequent restoration of possession. In that case the suit was instituted in the year 1996 when the notice of cancellation was issued in 1984. This court found that the suit was essentially for declaration and was governed by Article 58 where the limitation was three years from the accrual of cause of action and not Article 65, as claimed. In that case, on facts this court found that the claim of exclusion of time on the ground of pendency of yet another suit before the small causes court, could not be accepted, inasmuch as the cause of action in the two suits was different. It can thus be seen that the case turned on its own facts.

25. There cannot be any manner of dispute with the proposition that while examining the averments in plaint, the court has to carefully guard against an attempt at clever drafting in order to create an illusion of cause of action. However, whether there is such illusion being created on the basis of clever drafting would depend on the facts and circumstances of each case. In the case of *ITC Ltd. (supra)*, the bank had filed a suit claiming back the amount paid by it

to the seller under a letter of credit on the ground that the said amount was paid under the mistaken assumption that supply of goods was made to the buyer when there was no movement of the goods. The claim of the bank was based on the plea of alleged fraud. The Supreme Court found that there was no valid cause of action, as mere non supply of goods cannot give rise to a plea of fraud. On facts, it was found that the mere repeated use of the word fraud in the plaint was not sufficient.

26. In the case of *Church of Christ Charitable Trust (supra)*, there was a suit for specific performance filed which was based on a registered power of attorney, which was not produced along with the plaint. The Supreme Court found that Order VII, Rule 14 of the Code mandates the plaintiff to produce the documents on which the cause of action is based. It was, in these circumstances, found that the non production of the power of attorney was sufficient to reject the plaint under Order VII, Rule 11(a) of the Code.

27. In the case of *K. A Shivaraman (supra)*, before this court the suit was filed for recovery of the charges for the repair of a vessel in respect of which the plaintiff had raised several bills on the defendant. This court on facts found that what is necessary is disclosure of the cause of action. It was found that there has to be

pleadings that a demand was made and it was refused which was lacking in the said case. This court on facts found that mere raising of the bills is not sufficient.

28. In the case of *Selwyn Botelho (supra)*, the suit was for specific performance and was governed by Article 54 of the Limitation Act. In that case, the plaintiff claimed that the cause of action to file the suit first accrued in July 2005 and again when the defendant No. 1 having received the legal notice, failed to act on the same and the same was a continuing cause of action. The suit in that case was filed on 30.3.2011. This court found that Article 54 does not contemplate any continuing cause of action. The contention on behalf of the plaintiff therein that the suit is governed by Article 27 of the Limitation Act was also not acceptable.

29. Lastly, in the case of *Raghvendra Sharan Singh (supra)*, before the Supreme Court a registered Gift Deed, admittedly executed by the plaintiff along with his brother was sought to be challenged as being executed for ostensible purpose and as being a Showy Gift Deed after 22 years of its execution. It was found that the deceased brother of the plaintiff, who was one of the co-executant to the deed, never challenged the deed during his life time. In such circumstances, it was found that the suit, which was governed by Article 59 of the Limitation

Act, was barred by limitation and the courts below were in error in refusing to reject the plaint on the ground of limitation.

. It can thus be seen that the cases turned on their own facts.

30 I have gone through the impugned order. I do not find that the ultimate conclusion of refusal to reject the plaint under Order VII, Rule 11(a) and (d) of the Code needs interference in the exercise of revisionary jurisdiction of this court. The revision applications are accordingly dismissed with no order as to costs. It is however made clear that the observations herein are for the limited purpose of examining the issue of rejection of plaint and the trial court shall not be influenced by the same at the trial.

31. At this stage, Mr. Korgaonkar, the learned counsel for the applicant in Civil Revision Application No. 44 of 2015 states that on account of the stay operating in the revision applications and the present situation of non functioning of the courts due to lock down, the applicant was unable to file written-statement in the suit. He states that the applicant shall file written-statement alongwith a formal application for permission to file such written-statement. Mr. Desai, the learned counsel for the first respondent / plaintiff states that the plaintiff shall not object, if such an application is filed alongwith the written-statement within a period of four weeks from today. In such

circumstances, liberty is granted to the applicant to file written-statement alongwith a formal application for permission before the trial court within four weeks from today. In view of the no objection by the plaintiff, the trial court shall pass appropriate orders on the same. The suit is five years old and the trial court shall proceed to decide the suit as expeditiously as possible.

Sd/-
C. V. BHADANG, J.

Vinayak
P.
Halemath

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signed by
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