

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

NOTICE OF MOTION NO. 864 OF 2016

IN

SUIT NO. 2276 OF 2009

Apsara Co-operative Housing Society
Ltd., Having its correspondence address
at 805, Pine Wood, Raheja Willows,
Kandivali (E), Mumbai – 101

...Applicant
(Ori.Deft.5)

In the matter between

M/s. Om Enterprises
a partnership firm registered under the
Indian Partnership Act, 1932, having its
registered office at 302, Sharada
Chambers, New Marine Lines,
Churchgate, Mumbai – 400 020

...Plaintiff

Versus

- 1. The Collector (U.L.C.) Greter Mumbai**
having its office at 5th Floor, Near Chetna
College, Mumbai Suburban District,
Administrative Building, Bandra (E),
Mumbai – 400 052.
- 2. Additional Collector and Competent
Authority, (ULC) Greater Mumbai,**
having its office at 5th Floor, Near Chetna
College, Mumbai Suburban District,
Administrative Building, Bandra (E),
Mumbai – 400 052
- 3. City Survey Officer, Mulund**
having his office at Topiwala College
Compound, 1st Floor, Mulund (W),
Mumbai – 400 080
- 4. State of Maharashtra**
through Principal Secretary, Mantralaya
Mumbai – 400 032

5. Apsara Co-operative Housing Society Ltd. Having its correspondence address at 805 Pine Wood, Raheja Willows, Kandivali(E), Mumbai – 101.

...Defendants

Mr. Aditya Shiralkar, a/w Parag Shah, Ms. Prachi, i/b M/s. Shiralkar & Co., for the Plaintiff.

Ms. Mandakini Kumari Sinh, for the Applicant/Defendant no.5.

Mr. Hemant Haryan, AGP, for Defendant nos.1 to 4.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 4th November, 2019

PRONOUNCED ON: 31st January, 2020

JUDGMENT:-

1. This motion is taken out by defendant no.5 Apsara Co-operative Housing Society Ltd. ('the society') for rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ('the Code').

2. The suit is instituted for declaration that plaintiff is the owner of the property described in the Schedule (Exhibit-A) bearing Survey No.25 Hissa No.2 CTS 1250 admeasuring 1578.6 sq. mtrs. and Survey No.25 Hissa No.3 CTS 1251 admeasuring 1353.1 sq. mtrs. situated at] Kanjur village road, Kanjurmarg, Mumbai, ('the suit property'). Conversely, the defendants have no right, title or interest in the suit property. The plaintiff has also sought a declaration that the notifications under Section 10(1) and under Section 10(3) of the Urban Land Ceiling Act, 1976 ('the ULC Act', for short) in respect of the suit

property are illegal and void and those notification and declaration be cancelled and set aside. The plaintiff has further prayed that the allotment of the suit property in favour of defendant no.5, the applicant herein, on 31st October, 2008, being fraudulent, illegal and void, be also quashed and set aside.

3. Since the applicant seeks the rejection of the plaint, it may be apposite to immediately notice the averments in the plaint. The case of the plaintiff, as averred in the plaint, can be summarised as under:

(a) The Khot of the village Kanjur was the original owner of the suit property. The Khot executed an agreement for sale of the suit property in favour of one Girijashankar S. Pande on 21st February, 1972 for a valuable consideration. The said Girijashankar, in turn, with the consent and confirmation of the Khot of village Kanjur, agreed to sell the suit property to the plaintiff by executing an agreement for sale dated 20th March, 1980. As the suit property was under the purview of the provisions of the ULC Act, the plaintiff submitted a scheme to the Additional Collector and the competent authority, Urban Land Ceiling, Mumbai – defendant no.2, for construction of the tenements for the weaker sections of the society under Section

21 of the ULC Act. By an order dated 4th November, 1982, the plan was sanctioned and IOD was issued by Municipal Corporation of Greater Mumbai, in respect of the suit property for the proposed construction of tenements for weaker sections of the society. On 5th September, 1983, the plaintiff submitted a new scheme for the construction of tenements for the weaker sections of the society. Defendant no.4 passed an order on 26th October, 1984 and granted, in principle, approval to the scheme, for construction of tenements on the suit property, subject to certain conditions. A dispute arose as the suit property was mutated in the record of rights in name of another entity.

(b) In the meanwhile, on 27th May, 1982, the Khot of village Kanjur executed a conveyance whereby the suit property came to be conveyed to the plaintiff. The deed of conveyance was registered with the Sub-Registrar (Assurances) on 29th May, 1998. The name of the plaintiff came to be mutated to the record of rights of the suit property. The plaintiff thus became absolute owner of the suit property.

(c) In the month of April 2009, the plaintiff noticed that some survey work was being carried out in the suit property. On enquiry, it transpired that defendant nos.1 and 2 had issued

notices under the provisions of the ULC Act to Shri. Girijashankar Pande, who had died in or about the year 1997. On the strength of the said notices, further orders and directions were passed under the provisions of the ULC Act, despite the name of the plaintiff having been reflected in Index-II and mutated to the record of rights as the absolute owner of the suit property. None of the notices were served on the plaintiff. The authorities had proceeded to acquire the suit property under the provisions of the ULC Act in utter disregard to lawful title and possession of the plaintiff and the schemes and orders which were already passed. In the process, the authorities issued a notification under Section 10(1) of the ULC Act on 30th March, 2000. A notification under Section 10(3) came to be issued on 7th August, 2006 and the suit property came to be acquired thereunder with effect from 22nd August, 2006. The authorities proceeded to prepare documents showing that the possession of the suit property was taken *ex parte*. Ultimately, the Government by an order dated 13th October, 2008 allotted land admeasuring 1326.06 sq. mtrs. to defendant no.5 for the purpose of housing society.

(d) The plaintiff claims that it has all along been in possession of the suit property. The plaintiff was never

dispossessed. The order, declaration and notifications under the ULC Act have been passed without any notice to the plaintiff, who is the lawful owner of the suit property. Hence, the suit for the reliefs, as indicated above.

4. In the backdrop of the aforesaid nature of the suit, defendant no.5 – society has preferred this application for rejection of the plaint. The substance of the application is that the suit for declaration and other consequential reliefs is apparently barred by law of limitation. The applicant claims that from the bare perusal of the averments in the plaint, it becomes crystal clear that the plaintiff was at all times and, in any event, since 1982 - 1983, aware of the proceedings initiated under the ULC Act. The plaintiff was aware that its predecessor in title Girijashankar had filed returns under the ULC Act. Even the plaintiff claims to have submitted schemes under Section 21 of the ULC Act, not once but twice. In the face of the averments in the plaint, which betray the knowledge of the plaintiff about the proceedings under the ULC Act, the claim of the plaintiff that in or about April 2009, it noticed that some survey was being carried out in the suit property is a subterfuge. The said assertion, being patently false and against the weight of the record, cannot furnish the cause of action and

the starting point of limitation. Those assertions have been made with a view to bring life into the suit which is otherwise hopelessly barred by law of limitation. Thus, the plaint be rejected under the provisions of Order VII Rule 11(d) of the Code.

5. The plaintiff has resisted the prayer of defendant no.5 by filing an affidavit-in-reply. The plaintiff asserts that the application for rejection of the plaint is wholly misconceived. If the averments in the plaint are read as a whole, it becomes evident that the claim of the plaintiff is rested on the title to the suit property, on the strength of the Deed of Conveyance. None of the notices was ever served on the plaintiff. The fact that the plaintiff was aware of the proceedings, which were initiated upto the year 1983, is of no consequence as the authorities had issued the notification under Section 10(1), in the year 2000, by which, the plaintiff had already acquired ownership over the suit property. The plaintiff is also in possession of the suit property. In this backdrop, the entire process of acquisition of the suit property under the provisions of Section 10 of the ULC Act is vitiated, and, consequently, the allotment of the land in favour of defendant no.5 is unsustainable. This being the

nature of the suit, the prayer of defendant no.5 for rejection of the plaint is untenable.

6. I have heard Mr. Shiralkar, the learned Counsel for the plaintiff and Ms. Sinh, the learned Counsel for the applicant, at some length.

7. A strenuous effort was made on behalf of the applicant to draw home the point that since the plaintiff was aware of initiation of the proceedings under the provisions of the Act by Mr. Girijashankar Pande, its predecessor in title and had, in fact, submitted the schemes under Section 21 of the Act in the year 1982 – 1983 itself, the institution of the suit in the year 2009 on the basis of the alleged acquisition of the knowledge about the proceedings under the Act, in the year 2009, is unsustainable. A bare perusal of the averments in the plaint indicates that the suit is barred by law of limitation as the plaintiff has all along been aware of the initiation of the proceedings under the Act. The learned Counsel for the applicant, thus, submitted that in view of the language of Rule 11 of Order VII, the stage of proceedings does not matter and once it is demonstrated that the suit is barred by limitation, the fact that the issues have been settled, including the issue of

limitation, does not preclude the Court from rejecting the plaintiff.

8. In opposition to this, the learned Counsel for the plaintiff submitted that the application, at this stage of the proceedings, is totally misconceived. The learned Counsel for the plaintiff would urge that in view of the restricted scope of the provisions contained in Clause (d) Rule 11 of Order VII, the issue of limitation, which is essentially a mixed question of law and fact, cannot be determined at this stage sans evidence. Even otherwise, according to the learned Counsel for the plaintiff, if the true nature of the plaint is considered, the claim of defendant no.5 that the suit is barred by law of limitation becomes explicitly untenable. It was urged that the aspect of rejection of the plaint is required to be determined on the basis of the averments in the plaint, at par, and if so construed, the suit which essentially assails the acquisition of the suit property in violation of the statutory mandate under Section 10 of the ULC Act, is clearly within the period of limitation.

9. Order VII Rule 11(d) reads as under:

“O.VII R.11. Rejection of plaint— The plaint shall be rejected in the following cases:—

.....

(d) where the suit appears from the statement in the plaint to be barred by any law.

.....”

10. On a plain reading, the Court is empowered to reject a plaint at any stage of the suit if a case under Clause (d) is made out. The fact that in the instant suit on 10th December, 2015, issues were framed, including the issue of bar of limitation, thus, does not constitute an impediment in dealing with the prayer for rejection of the plaint. The question as to whether the power to reject the plaint under the aforesaid provisions can be exercised, even after the framing of issues, has been considered by the Supreme Court in the cases of (i) *Azhar Hussain v. Rajiv Gandhi*¹, (ii) *Samar Singh v. Kedar Nath and others*² (iii) *I.T.C. Limited v. Debt Recovery Appellate Tribunal and others*³. In the later case, after following the pronouncements in the two former cases, it was held that the fact that the issues have been framed in the suit cannot come in the way of consideration of the application for rejection of plaint under Order VII Rule 11 of the Code.

11. The next aspect which warrants consideration, at the threshold, is the tenability of the plea for rejection of plaint based on the bar of limitation. The learned Counsel for the plaintiff would urge that the question of limitation, being a

¹ 1986 Supp. SCC 315.

² 1987 Supp. 663.

³ (1998) 2 SCC 70.

mixed question of law and facts, a very strict application of clause (d) of Rule 11 is required to be made. The resort to the provisions contained in Order VII Rule 11(d) for the purpose of rejection of the plaint on the ground of bar of limitation cannot be made unless, from the averments in the plaint, it becomes abundantly clear that the suit is barred by limitation.

12. To lend support to this submission, the learned Counsel for the plaintiff placed reliance upon a judgment of the Supreme Court in the case of *Ramesh B. Desai and others v. Bipin Vadilal Mehta & ors.*⁴, wherein the nature of the plea of rejection of plaint and, especially, under Clause (d) on the ground of bar of limitation, was extensively dealt with. The Supreme Court expounded the legal position in paragraphs 14 to 16 and 19, as under:

“14. The plea raised by the contesting respondents is in fact a plea of demurrer. Demurrer is an act of objecting or taking exception or a protest. It is a pleading by a party to a legal action that assumes the truth of the matter alleged by the opposite party and sets up that it is insufficient in law to sustain his claim or that there is some other defect on the face of the pleadings constituting a legal reason why the opposite party should not be allowed to proceed further. In *O.N. Bhatnagar vs. Smt. Rukibai Narsindas and others* (1982) 2 SCC 244 (para 9) it was held that the appellant having raised a plea in the nature of demurrer, the question of jurisdiction had to be determined with advertence to the allegations contained in the statement of claim made by respondent 1 under Section 91(1) of the Act and those allegations must be taken to be true. In *Roop Lal Sathi vs. Nachhattar Singh Gill* (1982) 3 SCC 487 (para 24), it was observed that a preliminary objection that the election petition is not in conformity with

⁴ (2006) 5 Supreme Court Cases 638.

Section 83(1)(a) of the Act i.e. it does not contain the concise statement of the material facts on which the petitioner relies, is but a plea in the nature of demurrer and in deciding the question the Court has to assume for this purpose that the averments contained in the election petition are true. Reiterating the same principle in *Abdulla Bin Ali and others vs. Galappa and others (1985) 2 SCC 54*, it was said that there is no denying the fact that the allegations made in the plaint decide the forum and the jurisdiction does not depend upon the defence taken by the defendants in the written statement. In *Expfar Sa and another vs. Eupharma Laboratories Ltd. and another (2004) 3 SCC 688 (para 9)*, it was ruled that where an objection to the jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that granted those facts the court does not have jurisdiction as a matter of law. In this case the decision of the High Court on the point of the jurisdiction was set aside as the High Court had examined the written statement filed by the respondents in which it was claimed that the goods were not at all sold within the territorial jurisdiction of Delhi High Court and also that the respondent 2 did not carry out business within the jurisdiction of the said High Court. Following the same principle in *Indian Mineral & Chemicals Co. and others vs. Deutsche Bank (2004) 12 SCC 376 (paras 10 and 11)*, it was observed that the assertions in a plaint must be assumed to be true for the purpose of determining whether leave is liable to be revoked on the point of demurrer.

15. The principle underlying Clause (d) of Order 7 Rule 11 is no different. We will refer here to a recent decision of this Court rendered in *Popat and Kotecha Property vs. State Bank of India Staff Association (2005) 7 SCC 510* where it was held as under in para 10 of the report: -

“10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”

16. It was emphasized in para 25 of the report that the statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11 CPC. The principle is, therefore, well settled that in order to examine whether the plaint is barred by any law, as contemplated by sub-rule (d) of Order 7 Rule 11 CPC, the averments made in the plaint alone have to be seen and

they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence. Applying the said principle, the plea raised by the contesting respondents that the Company Petition was barred by limitation has to be examined by looking into the averments made in the Company Petition alone and any affidavit filed in reply to the Company Petition or the contents of the affidavit filed in support of Company Application No. 113 of 1995 filed by the respondents seeking dismissal of the Company Petition cannot at all be looked into.

.....

19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words "barred by law" occurring in Order 7 Rule 11(d) CPC would also include the ground that it is barred by law of limitation has been recently considered by a two-Judge Bench of this Court to which one of us was a member (Ashok Bhan J.) in *Balasaria Construction Pvt. Ltd. vs. Hanuman Seva Trust and others*) decided on 8.11.2005 and it was held: -

"8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the paint it cannot be held that the suit is barred by time."

This principle would be equally applicable to a Company Petition. Therefore, unless it becomes apparent from the reading of the Company Petition that the same is barred by limitation the petition cannot be rejected under Order 7 Rule 11(d) CPC."

(emphasis supplied)

13. A reliance was also placed on another judgment of the Supreme Court in the case of *C. Natrajan vs. Asim Bai and another*⁵, wherein after adverting to the pronouncement of the

⁵ (2007) 14 SCC 183.

Supreme Court in the case of **Popat and Kotecha Property vs. State Bank of India Staff Association**⁶, it was enunciated as under:

“8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the fact and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. (See *Popat and Kotecha Property v. SBI Staff Assn.*)”

14. The learned Counsel for the plaintiff placed reliance on another judgment of the Supreme Court in the case of ***Ram Prakash Gupta vs. Rajiv Kumar Gupta & otehrs***⁷, to bolster up the submission that the plaint cannot be rejected on the ground of being barred by law of limitation under Clause (d) Rule 11 of Order VII at the belated stage, without appreciating the evidence.

15. It would be contextually relevant to note the decision of the Supreme Court in the case of ***Balasaria Construction (P) Ltd. v. Hanuman Seva Trust and others***⁸, wherein the Supreme Court had adverted to the reference of the question as to whether the words, “barred by law” under Order VII Rule 11(d) include the ground that it is barred by law of limitation, to a

⁶ (2005) 7 SCC 510.

⁷ (2007) 10 SCC 59.

⁸ (2006) 5 SCC 658.

larger Bench and the decision thereon. The observations of the Supreme Court in paragraphs 5 to 7 are significant. They are extracted below:

“5. Noticing the conflict between the various High Courts and the apparent conflict of opinion expressed by this Court in *N. V. Srinivasa Murthy v. Mariyamma and Popat and Kotecha Property v. State Bank of India Staff Assn.* the Bench referred the following question of law for consideration to a larger Bench:

“Whether the words ‘barred by law’ under **Order 7 Rule 11(d)** would also include the ground that it is barred by the law of limitation.”

6. Before the three-Judge Bench, counsel for both the parties stated as follows:

“...It is not the case of either side that as an absolute proposition an application under Order 7 and Rule 11(d) can never be based on the law of limitation. Both sides state that the impugned judgment is based on the facts of this particular case and the question whether or not an application under Order 7 Rule 11(d) could be based on law of limitation was not raised and has not been dealt with. Both sides further state that the decision in this case will depend upon the facts of this case.”

7. In view of the statement made by the counsel for the parties, the Bench held that the question referred to the larger Bench was academic so far as this case is concerned and accordingly declined to decide the question. The case was sent back to the Bench for disposal on merits based on the facts of the case.

(emphasis supplied)

16. The position which thus emerges is that though the bar of limitation can be urged as a ground for rejection of plaint in exercise of powers under Order 7 Rule 11(d) of the Code yet two further considerations are of paramount significance: one, the issue of limitation being more often than not a mixed question

of facts and law, the scope of determination, at the threshold, is inherently limited, and two, the plea of rejection of plaint, being in the nature of a demurrer, the averments in the plaint, as they stand, are required to be looked into and the veracity and relative merit of the averments cannot be enquired into.

17. How the averments in the plaint are to be read for the purpose of determining the question as to whether it discloses a cause of action? The Supreme Court delineated the approach in the case of *T. Arivandandam vs. T. V. Satyapal and another*,⁹ in the following words:

“5. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X, C.P.C. An activist Judge is the answer to irresponsible law suits.”

18. In the light of the aforesaid exposition of legal position as regards the nature of the plea for rejection of plaint and the scope of enquiry, permissible in law, reverting to the facts of the case at hand, the averments in the plaint are required to be construed. The material avrements in the plaint have, thus, been adverted to above, in detail, on purpose. Indisputably, the

⁹ AIR 1977 Supreme Court 2421.

principal prayers in the plaint are of declaratory nature. The plaintiff, *inter alia*, seeks declaration that the notification dated 30th March, 2000 under Section 10(1) of the ULC Act and the notification dated 7th August, 2006 under Section 10(3) of the ULC Act are void and illegal. In both the notifications, late Girijashankar Pande, was shown the holder of the excess land. It is the claim of the plaintiff that the authorities issued notice under Section 10(5) calling upon the said person to deliver possession of the excess land and, thereafter, proceeded to allegedly prepare record to show that the possession was obtained under Section 10(6) of the ULC Act. The plaintiff asserts that the entire process was completed in flagrant violation of the procedure prescribed under Section 10 of the ULC Act.

19. It is pertinent to note that the plaintiff avers that the Khot of village Kanjur had executed the Deed of Conveyance on 27th May, 1998, which came to be registered on 29th May, 1998. The name of the plaintiff came to be mutated in the record of rights of the suit property, on 12th January, 2000. The plaintiff also claims to have been in possession of the suit property even in the month of August 2006, when the suit property was allegedly acquired by the authorities of the State. Conversely, it is alleged

that Girijashankar Pande had expired in or about 1997. Moreover, under the provisions of sub-section (5) of Section 10, the authorities were enjoined to give a notice in writing to the person who is in possession of the excess land, which is vested in the State Government under sub-section (3). The substance of the claim of the plaintiff is that neither the notifications under Section 10(1) and (3) nor the notice under sub-section (5) of Section 10 were ever addressed to, and served upon, the plaintiff.

20. It is pertinent to note that the ULC Act came to be repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 ('the Repeal Act'). Section 3(1) of the Repeal Act expressly saves the vesting of any vacant land under sub-section (3) of Section 10, provided the possession of such vacant land has been taken over by the State Government. The State Government adopted the Repeal Act on 29th November, 2007. The question as to whether the possession of the suit property was taken over by the State Government in conformity with the provisions of sub-section (5) and (6) of Section 10 of the ULC Act, thus, becomes relevant.

21. It would be apposite to make a reference to the judgment of the Supreme Court in the case of *State of Uttar Pradesh vs.*

Hariram,¹⁰ wherein the following question arose for consideration:

“....Whether the deemed vesting of surplus land under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 [for short, ‘the Act’] would amount to taking de facto possession depriving the landholders of the benefit of the saving clause under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 [for short, the Repeal Act]”.

22. The Supreme Court answered the question in the following words:

“42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owner or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act.”

(emphasis supplied)

23. From the aforesaid pronouncement of the Supreme Court, it becomes clear that the State Government is enjoined to demonstrate that the possession of the suit land was taken in conformity with the provisions of Section 10 of the ULC Act before the Repeal Act came into force and, thus, the vesting of

¹⁰ 2013(4) SCC 280.

the suit land in the State Government is saved by Section 3(1) of the Repeal Act.

24. In the light of the aforesaid nature of the suit and the issues which crop up for consideration, the submission on behalf of the applicant that since the plaintiff was aware of the proceedings initiated under the ULC Act, as in the year 1982-1983 itself the schemes under Section 21 were submitted, and that constitutes the starting point of limitation, within the meaning of Article 58 of the Limitation Act, does not merit acceptance. Evidently, at that point of time, there was no threat to or infringement of the rights of the plaintiff or its predecessor in title.

25. Resultantly, I am not persuaded to agree with the submission on behalf of the applicant that the suit being, *ex facie*, barred by limitation, the plaint deserves to be rejected under Order VII Rule 11(d) of the Code. The Notice of Motion, therefore, deserves to be dismissed.

26. Hence the following order.

The Notice of Motion stands dismissed.

[N. J. JAMADAR, J.]