

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8759 OF 2019**

Arun Achyutrao Bhave Petitioner.
V/s
Sarita Ashok Bhave & Anr. Respondents.

Mr. Murlidhar L. Patil for the Petitioner.
Mr. Raju M. Yamgar for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 2, 2021

P.C.:-

1] In a suit for preemption, Petitioner moved an application under Order 7 Rule 11(d) claiming that the suit is time barred under Rule 11(a) of Order 7. The said application came to be rejected by the order impugned dated 22/10/2018. As such this Petition.

2] Submissions are, after compromise decree in Regular Civil Appeal No.204 of 2005, Petitioner/Defendant gave an offer to the Respondents/Plaintiffs to purchase the property. However, Respondents/Plaintiffs have not exercised their option and have chosen to file Special Civil Suit No.119 of 2017. According to the learned counsel for the Petitioner, perusal of the suit does not disclose

any cause of action so also suit is not maintainable under Rule 11(d) of Order 7 of the CPC. Support is drawn from the Judgment of Delhi High Court in the matter of *Lachhman Das and others vs. Hakim Sita Ram and others* reported in **1975 SCC OnLine Del 52** particularly para 11, so as to claim that the agreement which allegedly gives right in favour of the Respondents/Plaintiffs of preemption is against the public policy and as such cannot be acted upon.

3] The learned Counsel for the Respondents/Plaintiffs supports the order impugned.

4] With the assistance of learned Counsels, I have perused the entire Plaint of the Regular Civil Suit No.119 of 2017. Bundle of facts, as are pleaded in the plaint coupled with cause of action in para 7, sufficiently disclose cause of action in favour of the Respondents/Plaintiffs. Apart from above, it cannot be inferred from the record as to under which provisions of law suit claim is barred by limitation.

5] The judgment of Delhi High Court in the matter of *Lachhman*

Das cited supra has no relevance to the issue sought to be raised in this Petition and as such same cannot be relied on.

6] In the aforesaid backdrop, view expressed by the Trial Court is in tune with the legal provisions. No interference is called for. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)