

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 306 OF 2021**

Dinkar Anatu Gurav, since deceased through ...Applicants
his LHRs Ashok D. Gurav & Ors

Versus

Vilasrao Dattatraya Jagdale & Ors ...Respondents

Mr. Kalpesh U. Patil, for the Applicants.

Mr. Girish R. Agrawal, for the Respondents.

CORAM: Smt. Bharati Dangre, J.

DATED: 22nd December 2021

P.C.:-

1. Heard the learned Counsel for the Applicant and the learned Counsel for the Respondent. The Applicant is aggrieved by rejection of their application filed under Order 7 Rule 11 of the Code of Civil Procedure 1908 seeking rejection of the plaint on the ground that there is no cause of action and that the Suit is barred by limitation.

The said order was passed on 05.03.2020 by the Joint Civil Judge Senior Division, Karad in Regular Civil Suit No.

155 of 2018.

2. The facts leading to the Petition are that the Plaintiff instituted the suit for mandatory injunction in the Court of Civil Judge Senior Division, in which the Collector and the Chief Executive Officer of the Karad Municipal Council are impleaded as Defendant Nos. 7 and 8 respectively. The injunction is sought *qua* the property mentioned in paragraph 1A by alleging that Defendant Nos. 7 and 8, shall be issued with a mandate of constructing the road mentioned in column 1D of the plaint.

3. Defendant Nos. 1 to 6 to the said suit filed an application under Order 7 Rule 11 of the Code of Civil Procedure 1908 seeking rejection of the plaint on the ground that the suit ought to have been instituted within a period of six months in terms of Section 304 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965. The ground that no notice was issued to the Municipal Council as contemplated under Section 304 was also pressed into service apart from lack of notice under Section 80 of the Code of Civil Procedure, 1908. In absence of such notice being issued and the mandate as contained in Section 304 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 being followed, it was prayed that the plaint itself is liable to be rejected.

4. On perusal of the aforesaid application and Section 304 of the Act of 1965, it is apparent that Section 304 set out the procedure for institution of suit against the Council, its officers and servants for acts done in pursuance or executing the provisions under the enactment. It contemplate that no suit shall lie against the Council or against any Committee constituted under the Act or any of its officers or servants of the Council, in respect of any alleged neglect or default in execution of the provisions of the Act; unless it is commenced within six months next after the accrual of the cause of action and until expiration of one month after the notice in writing has been delivered to the Office of the Municipal Council or the concerned officer.

5. It is this bar imposed under Section 304, in the wake of the point of limitation and also the institution of the suit in absence of notice being served was projected to be a ground for rejection of the plaint by canvassing it under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

The learned Judge has considered the aforesaid objection and has noted that the bar was operative against the Municipal Council, and since the Municipal Council has not raised any objection, the plaint do not deserve rejection at the instance of Defendant Nos. 1 to 6. According to the Plaintiff, the cause of action arose on 04.06.2016 when the application

was forwarded to the Defendant No. 8 to take action in terms of earlier application and the perusal of the plaint would reveal that it is a specific case of the Plaintiff that despite repeated requests the Municipal Council had failed to discharge the duties statutorily endowed upon it. In such circumstances, the bar of limitation cannot invoke to throw the plaint itself at its threshold, and in any case the point of limitation is a mixed question of fact and law and throwing the plaint on the said point of limitation is not an appropriate course to be adopted.

6. As far as the issuance of notice is concerned, the notice being akin to the notice under Section 80 of the Code of Civil Procedure 1908 which permit the Authority to cure the defect or the lacuna within the time frame of service of notice, it is for the Municipal Council to raise such an objection and in absence of the Council raising the said ground, the learned Judge has rightly rejected the application filed by Defendant Nos. 1 to 6.

7. Finding no legal infirmity in the said order, the same is upheld. Resultantly, the present Civil Revision Application is dismissed.

(Smt. Bharati Dangre, J.)