

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.2 OF 2021
IN
CIVIL REVISION APPLICATION NO. 108 OF 2021

Miyalal Matin Shaikh and anr .. Applicants
Versus
Shabbir A. Hamid Shaikh, deceased
thru LRs Smt.Noorjaha S. Shaikh & Ors .. Respondents

...

Mr. Ashok B. Tajane for the applicants.
Mr.Ajit V. Alange for the respondents.

CORAM: BHARATI DANGRE, J.
DATED : 21st DECEMBER 2021

P.C:-

1 Heard Advocate Mr.Tajane for the applicant who has filed the Review Petition, seeking review of the order dated 12th October 2021, which uphold the impugned order and dismiss the Civil Revision Application.

 The ground on which the review is sought, is to the effect that the date of death of Shabbir Shaikh is wrongly recorded as '12/4/2014' whereas he expired on 12/4/2004 and the plaint also wrongly mention the said date as '12/4/2014'. According to Mr.Tajane, the limitation will therefore, start running from 2004 and this is an error apparent on the face of record.

2 I have considered the said submission. Pertinent to note that while the Application filed by defendant seeking rejection of plaint was considered by the trial Court as well as by me, in the Revision Application. I have made reference to Section 42 of the Partnership Act where it was only on the stipulated grounds, the partnership was cease to exist and by recording that the partnership continued till a notice was issued on 5/5/2017, when a declaration was made that the partnership stood dissolved from the date of issuance of the notice, I have recorded that the cause of action continued and ultimately when the limitation is a mixed question of fact and law, the plaint cannot be rejected solely on the said ground.

Another ground on which Mr.Tajane seek review is that the right to sue did not survive in the legal heirs and therefore, both the order impugned as well as this Court has not adverted to the said aspect of the matter. This is not a ground which has set out in the application filed under Order 7 Rule 11 of the Code of Civil Procedure, but Mr.Tajane state that this was pleaded by him in the written notes of arguments tendered before the trial Court as well as this Court. Since the written notes of arguments not being a part of pleading and particularly when rejection of plaint is sought by filing an application under Order 7 Rule 11, the pleadings assume great importance and in absence of any pleadings to that effect, there cannot be said to be any error apparent on the face of record.

3 Review Application therefore deserve to be rejected.

SMT. BHARATI DANGRE, J