

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.2212 OF 2019**

**PUSHPABAI MOHANLAL SHARMA AND ANOTHER  
VERSUS  
SANDIPKUMAR SHAMSUNDAR KHADELWAL AND OTHERS**

...  
Advocate for Petitioners : Mr. Pathan Hamzakhan I.  
Advocate for Respondent No.3: Mr. Pradeep V. Ambade  
...

**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 08<sup>th</sup> JUNE, 2022**

**PER COURT :**

1. This petition is directed against the order passed below Exhibit 31 and 64 in Special Civil Suit No.243/2014, by the learned Civil Judge, Senior Division, Bhusawal, thereby rejecting the applications filed by the petitioners under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure. By these applications, the original defendants/petitioners sought dismissal of the suit.

2. Having heard the learned advocates for the respective parties and after going through the documents placed on record and the impugned order, it appears that in the registered agreement a condition was imposed on defendant No.1 that sale deed should be executed after necessary permission from the competent authority is obtained. It is not the case of the defendant No.1 that he had obtained necessary permission and even

thereafter there was lapse on the part of the plaintiff which has frustrated the agreement. It, therefore, appears from the record that in the present case time is not the essence of the contract. Article 54 of the Schedule to the Limitation Act provides that limitation of three years starts either from the date fixed for performance or if no such date is fixed, when the plaintiff has noticed that the performance is refused.

3. The trial Court after going through the record and rival submissions has recorded a finding that time is not the essence of contract in the case in hand and both the sides have equal right to establish that refusal to perform the contract was on any particular date and the same is question of fact as well as law. The trial Court has, therefore, rightly rejected the applications filed by the petitioners by assigning cogent reasons.

4. There is no illegality or perversity in the order impugned in the present petition. Writ petition, being devoid of merits, is dismissed. No costs.

5. The trial Court is directed to expedite the suit.

**(NITIN B. SURYAWANSHI, J.)**