

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 111 OF 2021

SOU. MANGAL SARJERAO NIKAM

....APPLICANT

V/s.

BHAGWAN LAXMAN KHADKE

....RESPONDENT

Mr. Rushikesh G. Patil Advocate for the Applicant

Mr. Sangramsinh S. Yadav for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 19, 2022.

P.C.:

- 1) Heard.
- 2) Based on Agreement of Sale dated 11/04/2014, Respondent initiated R.C.S. No. 66/2019 for specific performance in which Applicant-Defendant nos. 2 & 3 took out an application under Order VII Rule 11(a) and (b) of Code of Civil Procedure, 1908 vide Exh. 15 which is rejected on 01/04/2021. As such, this Revision.
- 3) The submissions are, Court below has failed to appreciate that suit is based on Agreement of Sale dated 11/04/2014. Sale Deed was

to be executed within period of 4 months. Suit is initiated after expiry of limitation of three years i.e. in 2019. It is further claimed that based on notice dated 29/04/2019, cause of action pleaded in the Plaint cannot be termed to be bringing the Suit within limitation and as such, Application ought to have been allowed by ordering rejection of Plaint as same is barred by limitation.

- 4) Counsel for Respondent would support the order impugned.
- 5) Considered submissions.
- 6) Court of Jt. Civil Judge Junior Division has in detail considered the claim put forth by the Respondent-Plaintiff while bringing the action before the Court below based on Agreement of Sale dated 11/04/2014 and the notice for specific performance issued on 29/04/2019. As such, bundle of facts in the Plaint are rightly so appreciated by the Trial Court for forming the opinion by way of impugned order of Suit claim is to be within limitation.
- 7) At the stage of deciding Application under Order VII Rule 11, Court below is required to be sensitive to the pleadings in the Plaint and not defence of the present Applicant-Defendant nos. 2 & 3. Pleadings in the Plaint in categorical terms establishes a fact that

Suit was initiated within period of limitation as request of the Respondent-Plaintiff for specific performance was not honoured.

8) As such, Court below was justified in recording a finding that Suit does not suffer from delay and laches and the Application preferred under Order VII Rule 11 was rightly rejected.

9) No error of jurisdiction could be noticed. Trial Court in detail has considered all aspects of the matter and has rightly so recorded finding thereby rejecting the prayer for rejection of Plaint. No case for interference in Revisional jurisdiction is made out. Revision as such fails, dismissed.

[NITIN W. SAMBRE, J.]