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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4506 OF 2022**

Smt. Kusum Shankar Bathe and Anr.Petitioners
V/s
New Lotus Co-operative Society Ltd.
And OthersRespondents

Mr. Anwar Shaikh for the Petitioners.
Ms. Niyati Sontakke i/b Amey Deshpande for Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 20, 2022

P.C.:-

1] Petitioners filed Special Civil Suit No. 180 of 2019, seeking declaration that agreement of sale and sale deed dated 30/05/2000 and 02/08/2000 respectively are null and void and not binding on the Petitioners. Plaint in the suit came to be rejected in exercise of powers under Order VII Rule 11 as the claim therein is held to be barred by limitation pursuant to the provisions of Article 58 of the Limitation Act. The suit was preferred after expiry of limitation of three years. Petitioners, thereafter, instead of preferring an appeal against the order of rejection of Plaint passed on 16th October, 2019 found out a via-media of preferring Review Petition before the same Court which

is rejected vide impugned order passed by Joint Civil Judge, Senior Division, Pune.

2] Submissions are, considering the nature of claim in the suit, provisions of Limitation Act will not be attracted. On facts, it is claimed that Petitioners are protected tenants, however permission as contemplated under B.T. & A.L. Act was not obtained before transaction was entered into. As such, Counsel for the Petitioners would urge that since fraud vitiates every transaction, provisions of Limitation Act will not be applicable to the facts of the present case. As such, according to him, Court below while passing the order in review jurisdiction has failed to consider and appreciate the said legal position.

3] Counsel for Respondents would support the order impugned.

4] Appreciated the aforesaid contentions.

5] It is not in dispute that Petitioners are Defendant Nos. 9 and 13

in RCS No.823 of 2010 in which identical reliefs are claimed by brother of the Petitioners. As such, Petitioners had knowledge about the alleged transaction in the said suit. Petitioners have chosen to prefer the suit after lapse of limitation period as Petitioners had knowledge from pleadings in RCS No.823 of 2010 about the cause alleged in the present suit.

6] That being so, Court below was justified in rejecting prayer of the Petitioners seeking review of the order of rejection of Plaint. No illegality could be noticed in the order impugned. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)