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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 23 OF 2019**

SHRI. KRISHNA ALIAS SHRIKRISHNA

....APPLICANT

V/s.

SMT. NANDA BALASAHEB DHAMALE

.....RESPONDENT

Mr. Tejas S. Bhide Advocate for the Applicant

Mr. Anand Lawate i/b Sandeep R. Waghmare Advocate for the Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 11, 2022.

P.C.:

- 1) Heard respective counsel.
- 2) Based on a registered Agreement of Sale dated 29/10/2013 which in express terms provides for execution of Sale Deed on or before 27/12/2013, a Suit for specific performance came to be initiated by the Respondent-Plaintiff against Petitioner-Defendant.
- 3) Petitioner invoked provisions of Order VII Rule 11(d) of Code of Civil Procedure, 1908 (Hereinafter referred to as 'the Code' for the sake of brevity) claiming that Suit claim is barred by limitation and

as such, Plaint is liable to be rejected. Said prayer moved by the Petitioner came to be rejected by the Trial Court vide order dated 30/10/2018. As such, this Petition.

4) The contentions of learned counsel for the Petitioner are, recitals in the Agreement of Sale in categorical terms provides the date of Agreement of Sale dated i.e. 27/12/2013. According to him, time was essence of contract. As such, suit action should have been initiated on or before 26/12/2016.

5) He would urge that the Court below has committed an error in rejecting the prayer for rejection of Plaint thereby observing that issue of limitation is a mixed question of law and facts particularly having regard to rival pleadings of the parties in the Suit. Learned counsel would rely on limitation prescribed under Article 54 of the Limitation Act, scheme of Order VII Rule 11(d) of the Code and the position of law that while deciding the prayer for rejection of Plaint under Order VII Rule 11(d) of the Code, the only claim of the Respondent-Plaintiff in the Plaint is required to be appreciated.

6) Learned counsel for Respondent would urge that even though there are recitals in the Sale Deed of getting Sale Deed executed on

27/12/2013, the fact remains that Respondent-Plaintiff was following with the Petitioner-Defendant for getting the Sale Deed executed. According to him, such plea of the Petitioner even if denied by the Respondent could be an issue which needs adjudication in the Suit. As such, the Court below was justified in recording a finding that issue of limitation since is a mixed question of fact and law, Plaintiff cannot be rejected. Since bundle of facts narrated in the Plaintiff, coupled with the disclosure of cause of actions takes the Suit claim within the ambit of limitation prescribed for lodging claim for specific performance, this Court should be slow in exercising discretion under Article 227 of Constitution of India. He would further claim that cause of action pleaded discloses that claim was well within limitation. As such, he has sought rejection of the Application.

7) Considered submissions.

8) Perusal of law laid down by the Courts in relation of scope and consideration in the matter of dealing with the prayer under Order VII Rule 11(d) of the Code for rejection of Plaintiff is well settled. The Court is required to appreciate the pleadings in the Plaintiff and not such other pleadings viz. written statement or the evidence.

Proceedings for rejection of Plaint can be invoked by a party at any stage of the suit proceedings.

9) If the claim put forth by the Respondent-Plaintiff in his Plaint for grant of specific performance is appreciated, same is based on registered Agreement of Sale dated 29/10/2013 which in express terms provides for getting the Sale Deed executed on or before 27/12/2013.

10) Admittedly, Suit is initiated on 02/08/2018 with pleadings that cause of action has accrued, as though orally asked by the Respondent-Plaintiff, the Sale Deed was not executed. It is pleaded that the Respondent-Defendant has executed a Gift Deed in favour of his wife i.e. Defendant no. 2. Provisions under the Code in relation to cause of action is required to be appreciated. Applicant has rightly placed reliance on Article 54 of the Indian Limitation Act which reads thus:

54. For specific performance of a contract – *Period of limitation* – Three years- *Time from which period begins to run* – The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

11) Though it is claimed that there were oral requests made by Respondent-Plaintiff to Petitioner-Defendants for getting Sale Deed executed which are specifically denied by Defendant. Such pleadings are too vague to consider the claim of Respondent-Plaintiff to be within limitation. There are no specific averments as to the date on which Respondent-Plaintiff approached the Petitioner-Defendant with a prayer or a request for execution of Sale Deed and the such request was denied at what point or stage by Petitioner-Defendant.

12) As such, the Court is required to be sensitive to the date of Agreement i.e. 29/10/2013, the date on or before the Sale Deed to be executed was 27/12/2013 and the period of limitation of three years prescribed under Article 54 of the Limitation Act which is counted from last date of which Sale Deed was to be executed.

13) As seen from the pleadings, foundation of the Suit is Agreement of Sale. As such, cause of action as pleaded in the Suit has to be reckoned from the date of which parties agreed to get the Sale Deed executed as is admittedly pleaded by Respondent-Plaintiff. As such, in a Suit for specific performance, rightly so pointed by the counsel for the Petitioner, Article 54 of the Limitation Act prescribes that

period begins to run from the date fixed for performance i.e. the aforesaid date fixed for execution of the Sale Deed.

14) In that view of the matter, since cause of action disclosed in the Petition appears to be time barred, the Court below in my opinion, has committed an error in refusing to reject the Plaint on the ground of claim being barred by limitation.

15) As such, order impugned dated 30/10/2018 passed below Exh. 18 by 2nd Jt. Civil Judge (Sr. Dn.), Khed-Rajgurunagar is hereby quashed and set aside. Exh. 18 stands allowed. Plaint in Suit No. 107/2018 is held to be barred by limitation and as such, stands rejected.

[NITIN W. SAMBRE, J.]