



WEB COPY



A.No.2054 of 2020 in C.S.No.751 of 2015

**A.No.2054 of 2020**

**in**

**C.S.No.751 of 2015**

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| <b>Reserved on<br/>16.09.2022</b> | <b>Pronounced on<br/>28.09.2022</b> |
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**G.CHANDRASEKHARAN, J.**

This application is filed under Order VII Rule 11 CPC for rejection of plaint.

2.The learned counsel for the applicant submitted that this suit has been filed by the respondent for repayment of a sum of Rs.10,00,000/- with interest and for compensation of Rs.1crore. He has claimed in the plaint that the applicant sold the property referred to in the suit through a sale deed dated 19.08.2010 to M/s.Pioneer Builders Ltd. It is further stated in the plaint that the respondent came to know about the said transaction in a counter filed in Crl.O.P.No.6439 of 2012, on 27.03.2012. Thus, the respondent admitted that he knew about the aforesaid transaction on 27.03.2012. In that case, the suit ought to have been filed within a period of three years from 27.03.2012. However, the suit was



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filed only on 28.04.2015, which is beyond the period of limitation.

Therefore, the plaint has to be rejected.

3.Per contra, the learned counsel for the respondent submitted that the applicant agreed to sell the property measuring 6000 sq.ft. with a building situated at No.8, Chittaranjan Salai, Alwarpet, Chennai 600 018, for a sum of Rs.11,09,00,000/-. A sum of Rs.10,00,000/- was paid as advance through cheque, dated 18.03.2010. However, the applicant had sold the property to M/s.Pioneer Builders Ltd. Therefore, the suit is filed for refund of the Advance amount of Rs.10,00,000/- along with interest and for compensation of Rs.1 crore for breach of promise, defaming the respondent's name and reputation, causing mental agony and business loss. The suit was filed in 2015, but this application is filed in 2020. The suit was filed in time. This suit is not barred by limitation and therefore, this application has to be dismissed.

4.Considered the rival submissions and perused the records.



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5.This application is filed on the claim that the suit was filed only on 28.04.2015, beyond a period of three years from 27.03.2012. However, this Court on verification of the plaint found that the plaint was filed in this Court on 26.03.2015. The seal of this Court is found on the original plaint. Thus, the claim of the applicant that the suit was filed only on 28.04.2015 is not correct. It was filed right on time, on 26.03.2015, within a period of three years from 27.03.2012. The learned counsel for applicant further submitted that in a suit for refund of advance amount, the Article applicable is Article 62 of the Limitation Act and not Article 54. In this regard, he pressed into service the judgment of this Court reported in **2013 (6) CTC 28 K.Shanmugam and another Vs.C.Samiappan and others**. It is observed in this judgment as follows:

*23. The ratio laid down by the Supreme Court is that the buyer shall have a statutory charge over the immovable property under Section 55(6)(b) of the Transfer of Property Act, 1882. The said view has been followed by various High Courts including the Division Benches of this Court. Citing all those decisions shall not be necessary. Suffice to state that now it is a settled*



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*position of law that limitation for refund of advance money with interest under an Agreement for Sale of immovable property is governed by Article 62 of the Limitation Act as the buyer has got a statutory charge over the property to the extent of interest of the seller and that hence the period of limitation shall be 12 years from the date on which the right to sue for the refund of advance amount accrues. Therefore, the Lower Appellate Court is definitely wrong in holding that the limitation for filing a Suit for refund of advance amount shall be governed by Article 54 of the Limitation Act and hence, the period shall be three years from the date of accrual of the right to sue. Consequently, the Lower Appellate Court has committed an error in holding that the Suit filed by the Appellants/Plaintiffs for refund of the advance amount is barred by limitation. The said finding of the Lower Appellate Court is erroneous and the same deserves interference and reversal.*

Even otherwise, the question of limitation is a mixed question of fact and law and it requires evidence to decide whether the suit is barred by limitation or not.



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6.For the reasons aforestated, this Court finds that this suit is filed in time and therefore, the application filed for rejection of plaint is dismissed with costs of the respondent.

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**28.09.2022**

Index: Yes  
Internet : Yes



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**G.CHANDRASEKHARAN, J.**

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**Pre-Delivery Order in**  
**A.No.2054 of 2020**  
**in**  
**C.S.No.751 of 2015**

**28.09.2022**