

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 50 OF 2023

Rupali w/o Mahavir Ravaka
& another

Applicants

Versus

Ujwala w/o Manoj Sethi

Respondent

Mr. P. K. Lakhotiya, Advocate for the applicants.

CORAM : R. M. JOSHI, J.

DATE : 17th APRIL, 2023.

PER COURT :

1. This application is filed taking exception to the order dated 17th December, 2022, passed by the 7th Jt. Civil Judge Senior Division, Aurangabad whereby application Exhibit 17 filed under Order 7 Rule 11 D of the Code of Civil Procedure is dismissed.

2. Learned counsel for the defendants states that the suit is barred by limitation in view of the averments in the plaint that total consideration was paid on 17th December, 2016 and that the sale deed in respect of Flat No. 6 was executed on 30th June, 2017. Thus, according to him, since the suit is not filed within limitation, plaint deserves to be rejected.

3. In this regard it is pertinent to note that while deciding application under Order 7 Rule 11 of the Code of Civil Procedure, only averments in the plaint can be looked into and not defence of the defendants. From perusal of the plaint it is clear that the cause of action to file suit spelt out is the date of issuance of notice to the defendants and since that time suit is within limitation. In view of this, plaint cannot be rejected on ground of bar of limitation. In any event, issue of limitation is a mixed question of facts and law and therefore, it cannot be decided at the stage of deciding application under Order 7 Rule 11 of the Code of Civil Procedure. It is open for the defendants to take up this issue at appropriate stage in the trial.

4. Next submission made by him is with regard to the tenability of the suit as against the defendant No. 2. According to learned counsel for defendants, there is no privity of contract between defendant No. 2 and plaintiff and as per the averments in the plaint, the amount of consideration was also paid to defendant No. 1. Thus, according to him, the plaint ought to have been rejected at least against defendant No. 2.

5. Perusal of application made before the Trial Court under Order 7 Rule 11 of the Code of Civil Procedure does not show that any such issue was ever agitated before it. Now at this stage, defendant No. 2 cannot be permitted to say that the Trial Court committed error in not considering the said issue. In absence of issue being raised specifically before the Trial Court, it was not expected from the Court to decide said issue. In the result, no fault can be found with the impugned order passed by the Trial Court.

6. Learned counsel for defendant No. 2 states that he may be permitted to file fresh application under Order 7 Rule 11 D of the Code of Civil Procedure. It is always open for the defendants to agitate their case as provided by law, hence no leave is necessary.

7. In the result, application is dismissed with costs.

8. Pending civil application if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge