

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 02 OF 2022

Deepak @ Pandurang Madhav Dhavlikar & ... Applicants
anr.

Versus

Yadu Deu Gaonkar ...Respondent

Mr. A. D. Bhobe, Advocate with Ms. S. Shaikh, Advocate for
the Applicants.

Mr. G. Panandikar, Advocate for the Respondents.

CORAM: B. P. COLABAWALLA, J
DATED: 12th JANUARY 2023

P.C.

1. The above Civil Revision Application is filed seeking to challenge the Order passed by the Senior Civil Judge 'A' Court, at Ponda, dated 06.01.2022.

2. By the impugned Order, the application filed by the Defendants therein (the Applicants herein) under Order VII Rule 11 of the Code of Civil Procedure, 1908, (CPC), was rejected by the Trial Court. The Trial Court, in a detailed Order, held that on a reading of the plaint not only does it disclose a cause of action but even on the question of limitation, the same being in a mixed question of fact and law, the plaint could not be rejected under Order VII Rule 11 of the CPC.

3. Mr. Bhobe, the learned Advocate appearing on behalf of the Applicants submitted that on a holistic reading of the plaint itself, the

cause of action pleaded by the Plaintiff is barred by the law of limitation. In this regard, he submitted that even according to the Plaintiff, the Memorandum of Understanding (MoU), (of which specific performance is sought), was executed in the year 2009 and which stipulated that the Sale Deed would be executed within a period of three months from the execution of the MoU. He submitted that even if one was not to consider that time was the essence of the contract, the Plaintiff had knowledge of the refusal of performance by the Defendants as far as on 31.07.2014, and, therefore, the claim itself was time barred on a simple reading of the plaint.

4. I have heard Mr. Bhobe at some length. I have also perused the plaint in great detail. As far as the time frame fixed for specific performance is concerned, the MoU itself records that the Sale Deed shall be executed within the next three months which time limit may be extended by the purchaser for reasons like pendency of finalisation of the Regional Plan RP-2021. From a bare reading of this clause, it is apparent that time was not the essence of the contract as the same was clearly extendable. This being the case, under Article 54 of the Limitation Act, 1963, the limitation would start to run when performance is refused. In the plaint, it is the specific case of the Plaintiff that after executing the MoU, the Plaintiff was regularly following up with Defendant no.1 for honouring the terms of the suit MoU and completion of the sale thereof, specially since the Plaintiff

had paid the entire consideration as contemplated in the MoU. It is thereafter stated that Defendant No.1 went on delaying the execution of the Sale Deed on one pretext or the other and on the ground that the name of Defendant No.1 was not being recorded in the occupant's column of Form I and XIV pertaining to the said property pursuant to the Sale Deeds mentioned in the plaint. Thereafter, on 31.07.2014, the mutation process was completed whereby the name of Defendant No.1 was duly recorded in the occupant's column of Form I and XIV. It is the specific case of the Plaintiff that he often visited the office of Defendant No.1 and tried to meet him on several occasions but his efforts were in vain and on other occasions Defendant No.1 continued with his false promises of executing the Sale Deed. In the plaint, it is the specific case that refusal of performance was first time notified to the Plaintiff in reply to the Plaintiff's Advocate's notice dated 29.09.2022.

5. When one looks at all these facts, I am unable to agree with Mr. Bhobe that the plaint as it stands can be rejected under Order VII Rule 11 of the CPC as being barred by the law of limitation. In my view, the Trial Court correctly came to the conclusion that in the facts of the present case, limitation is a mixed question of fact and law on which evidence will have to be led and hence the plaint could not be rejected under the provisions of Order VII Rule 11 of CPC.

6. Even as far as the cause of action is concerned, the Trial Court has analysed the plaint and has come to a correct finding that the plaint cannot be rejected on the ground that it does not disclose a cause of action. The plaint clearly sets out a cause of action against the Defendant No.1 and the relief sought on the basis of that cause of action. This is not a case of clever drafting where actually there is no cause of action. This issue has also been dealt with in some detail by the Trial Court.

7. Having gone through the Order passed by the Trial Court, I do not find that any interference is called for in my revisional jurisdiction. In these circumstances, the above CRA is dismissed. However, there shall be no order as to costs.

8. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
Date: 2023.01.12 15:02:48 +05'30'