

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4964 OF 2023

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Yashvantdatta Mohanrao Bendre

... Petitioner

V/s.

Jaywant Bajirao Yadav

... Respondent

Mr. Kalpesh U. Patil, for Petitioner.

Mr. Kuldip T. Pawar, for sole Respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 9, 2023

P.C.:

1. The petitioner is original defendant No.2 in Regular Civil Suit No.69 of 2016 filed by respondent for specific performance of agreement dated 31st March 2000. Agreement contains a specific clause that sale deed shall be executed before 31st March 2000.

2. Once, the period is fixed in the agreement, the rights of the plaintiff will be governed by Part-I of Article 54 of the Limitation Act, 1963. Therefore, cause of action for filing suit for specific performance will accrue in favour of plaintiff on 31st March 2000. However, plaintiff filed suit for specific performance in the year 2016, i.e. after 16 years. Therefore, prima facie, suit is barred by limitation.

3. According to the plaintiff, he waited till the disposal of the

Regular Civil Appeal No.516 of 1994 referred in the agreement to sale. According to plaintiff, he waited till the disposal of Regular Civil Appeal No.4 of 2002, arising out Regular Civil Suit No.73 of 1975. Regular Civil Appeal was therefore, dismissed, he again wait for disposal of Regular Civil Suit No.222 of 2013.

4. In the agreement, there is no clause which requires or precludes the plaintiff from filing suit for specific performance moreover, express condition in agreement to sale requires sale deed to be executed before 31st March 2000. Therefore, prima facie explanations provided by the plaintiff for delay in filing the suit can not be accepted.

5. In relation to suit for specific performance of immovable property time is not essence of the contract, however, intentions of the parties behind executing the agreement and other circumstances needs to be considered by the Trial Court. Prima facie, therefore, the suit having barred by law of limitation, the Trial Court could not have granted interim relief against the defendant from carrying out construction or changing nature of the suit property. Hence following order:

- a) The impugned order passed by District Judge-1 dismissing Miscellaneous Civil Appeal No.68 of 2022 is quashed and set aside.
- b) Miscellaneous Civil Appeal No. 68 of 2022 is allowed.
- c) The application below Exhibit-27 in Regular Civil Suit No.69 of 2016 is rejected.

6. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)