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

CIVIL REVISION APPLICATION NO.55 OF 2022

Arvind Rambhai Pethani & Ors.	... Applicants
V/s.	
Abhishek Enterprises, Through Its Proprietor Suresh Shivshankar Sharma & Ors.	... Respondents

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Mr. Drupad S. Patil with Mr. Suyash Sule for the applicant.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 29, 2023

PC.:

1. The applicants are defendants in Special Civil Suit No.331 of 2019. The respondent No.1 filed Special Civil Suit No.331 of 2019 seeking relief of declaration that agreement dated 14th January 2011 executed by defendant Nos.1 and 2 is not binding and further direction to execute tripartite agreement. Consequential injunction is also sought against defendant Nos.1 to 9 and further relief against defendant Nos.10 to 12 is sought restraining them from granting permission.

2. The applicants filed application under Order 7 Rule 11(D) which came to be rejected by impugned order. The defendants challenged the said order. This Court by order dated 9th March 2022, issued notice to the respondents. On the said day

respondent Nos.3 to 5 were represented. The office remark, thereafter, indicates that respondent Nos.1 to 2a and 2b are served. Respondent No.1 is the original plaintiff who is contesting respondent.

3. On perusal of the plaint, it appears that prayer clause (a) seeking declaration and specific performance is the principal relief and relief of injunction under clauses (b), (c) and (d) are consequential relief of injunction. Defendant Nos.10 and 11 are planning authority governed by the provisions of the Maharashtra Regional and Town Planning Act, 1966. On perusal of the plaint, it appears that the plaintiff was aware of denial of his rights in the year 2011. The plaintiff had filed an application under Order 21 Rule 97 in execution petition filed by the present applicants in the year 2011. According to the plaintiff, he claims rights through defendant Nos.1 and 2. From the averments in the plaint, it appears that the plaintiff was aware of denial of his rights in 2011 itself. Since the petitioner had knowledge of such rights, the suit of respondent No.1 is governed by Article 59 of the Limitation Act, 1963.

4. In so far as prayer clause (e) is concerned, such prayer is barred by section 149 of the Maharashtra Regional and Town Planning Act, 1966. Therefore, trial Court ought to have allowed the application of the applicants under Order 7 Rule 11(D).

5. On overall consideration of the material on record, the trial Court failed to exercise jurisdiction vested in it. Hence, following order:

- a) Impugned order dated 24th September 2021 passed by the 2nd Joint Civil Judge, Senior Division Panvel in Special Civil Suit No.331 of 2019 below Exhibit-29 is quashed and set aside;
 - b) The application below Exhibit-29 in Special Civil Suit No.331 of 2019 is allowed;
 - c) Special Civil Suit No.331 of 2019 is dismissed.
6. The civil revision application stands disposed of. No costs.

(AMIT BORKAR, J.)