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

CIVIL REVISION APPLICATION NO.678 OF 2023

Sadashiv Rajaram Salunke Through
POA Rakesh Sadashiv Salunkhe ... Applicant
V/s.
Pandurang Ramaji Natekar & Ors ... Respondents

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Mr. Rakesh Patil, for Applicant.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 20, 2023

P.C.:

1. The applicant is original defendant against whom respondents filed Regular Civil Suit No.86 of 2021 for specific performance of agreement to sell dated 29 July 2001.
2. On perusal of the agreement to sell, it appears that time to execute sale deed is not specified. Therefore, suit will be governed by Article 54 Part II of the Schedule to the Limitation Act, 1963. The limitation, therefore, will run from the date of refusal.
3. From the averments in the plaint and the documents annexed, it is not clear that the plaintiff had knowledge of refusal by defendant before filing of suit. Therefore, whether the suit is within limitation or not, in the facts of the case is the mixed question of law and fact; therefore, the parties need to be given

opportunity to prove the factum of refusal and the date when the limitation for suit for specific performance will be started.

4. Apart from the said fact, the agreement contains recital that the sale deed will be executed after getting permission. Therefore, rejection the application under Order 7, Rule 11 of the Code of Civil Procedure, 1908 does not suffer from legal infirmity.

5. The civil revision application is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)