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

CIVIL REVISION APPLICATION NO.203 OF 2023

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GANESH
KULKARNI

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Ballabh Prakash Agrawal

... Applicant

V/s.

Seven Indian Heads Infrabuild
Pvt. Ltd., through authorized
officer Yogesh Narayan Shukla

... Respondent

Mr. B.P. Verma i/by Pintu Singh for the applicant.

Mr. Ashish Kumar with Mr. Gonvinda Gupta for the
respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 4, 2023

P.C.:

- 1.** The applicant/original defendant has filed present civil revision application challenging order dated 2 September 2022 rejecting application under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 ("CPC" for short).
- 2.** The respondent is original plaintiff who filed Special Civil Suit No.103 of 2021 for relief of damages and mandatory injunction before Civil Judge Senior Division, Thane.
- 3.** The application filed by the applicant under Order 7 Rule 11(d) of the CPC contending that notice issued on 30 November 2017 furnishes cause of action for filing the suit and the suit

having been filed on 5 July 2021 is barred. The period of limitation provided under Article 55 of the Limitation Act, 1963 is three years from the date of breach.

4. Learned advocate for the applicant relying on the judgment in **Dabiben v. Arvindbhai Kalyanji Bhanusali (D) thr. L.Rs. & Ors.** reported in 2020 SCC OnLine SC 562 and **Rajendra Bajoria & Ors. v. Hemant Kumar Jalan & Ors.** reported in 2021 SCC OnLine SC 764 submitted that provisions of Order 7 Rule 11 are mandatory. If based on averments in the suit and documents annexed along with the plaint, the suit is barred by limitation, the Court has no other option but to dismiss the suit.

5. In the light of submissions made by the applicant and considering the plaint and documents annexed along with the plaint, I have scrutinized the materials on record. On perusal of notice dated 30 November 2017 it appears that the plaintiff called upon defendant to perform his part as per Memorandum of Understanding (“MoU” for short) which is subject matter of suit. From the averments of the plaint and the documents annexed, there is no material to show that the defendant denied the request of the plaintiff. It is only when the cause of action is borne out of plaint or documents annexed along with the plaint that the defendant’s right to claim relief was denied, the limitation under Article 55 of the Limitation Act is the date when contract is broken or the date when the defendant commits breach of contract. There is no material on record nor averments in the plaint to indicate that within three years before filing of the suit either breach was committed or contract was broken. Therefore, in my opinion,

considering the limited scope of inquiry under Order 7 Rule 11 of the CPC, it cannot be conclusively adjudicated that the defendant breached the contract three years prior to filing of the suit. Hence, the discretion exercised by the Trial Court cannot be faulted.

6. The civil revision application, therefore, stands rejected. No costs.

(AMIT BORKAR, J.)