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

CIVIL REVISION APPLICATION NO.23 OF 2023

VAIBHAV
RAMESH
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Datta Krushna Phate & Anr.

... Applicants

V/s.

Dnyaneshwar Baburao Pawar & Ors.

... Respondents

Ms. Payal Pawshe with Mr. Shekhar V. Mane for the
applicant.

Mr. Akshay Karlekar for the respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 26, 2023

P.C.:

1. By this application under section 115 of the Civil Procedure Code, 1908, the applicants/original defendant Nos.8 and 9 are challenging rejection of application under Order 7 Rule 11(d) of the Civil Procedure Code, 1908.
2. Respondent No.1 filed Regular Civil Suit No.325 of 2016 seeking specific performance of agreement to sell executed on 8th October 1998. Cause of action pleaded in the suit is refusal to execute sale deed despite receipt of notice dated 4th October 2016. The suit is filed in the year 2016.
3. The defendant Nos.8 and 9, therefore, filed an application under Order 7 Rule 11 contending that the plaintiff did not take any steps to get sale deed executed till 2016. According to the

defendants, suit is filed 18 years after the date of execution of agreement to sell. The sale deed was to be executed within two months from the date of receipt of permission of the competent authority under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. According to them, in a proceeding before the Tahsildar in 2008 right of the plaintiff was denied. Therefore, the suit is barred by law of limitation.

4. The Trial Court rejected the application.

5. On perusal of the impugned order and on consideration of record including plaint and documents annexed thereto, it appears that the agreement to sell was executed on 8th October 1998. Though there is proceeding between the plaintiff and defendants before the Tahsildar in the year 2008, however, on perusal of the documents produced on record at this stage, there is nothing to indicate that the defendants refused to perform their part of contract in a proceeding before the Tahsildar. To constitute refusal to perform contract as contemplated by Part II of Article 54 of the Limitation Act, 1963, the defendants must be in a position to show that such refusal is borne out from averments in the plaint or documents on record. In the facts of the present case, there is neither averment nor documents annexed to the plaint to indicate refusal.

6. According to the applicants, refusal to perform contract has deliberately been not pleaded by the plaintiff. However, the defendant Nos.8 and 9 are not in a position to show any document

or any other material to indicate that there is refusal on the part of the defendants. With the result, the exercise of power under Order 7 Rule 11 of the Civil Procedure Code, 1908, cannot be faulted.

7. Hence, there is no error of jurisdiction. The civil revision application is rejected. No costs.

(AMIT BORKAR, J.)