



CIVIL REVISION APPLICATION NO. 99 OF 2019

Versus

Dropadabai Vishnu Gangurde and Another. ..Respondents.

Mr. Jagdish G. Reddy (Aradwad) for the Applicant.

Coram : Sharmila U. Deshmukh, J.

Date : August 18, 2023.

P. C.:

1. Heard.
2. The revisional jurisdiction of this Court has been invoked against two orders passed on 26th October 2018 on two applications filed by two different sets of defendants under Order-VII Rule-11 of CPC seeking rejection of plaint.
3. Regular Civil Suit No.12 of 2018 has been instituted by the respondent–plaintiff seeking specific performance of the agreement of sale dated 23rd March 1994. The cause of action pleaded in the plaint is that registered sale deed was executed by the parties on 26th March 1994 and possession of the property was handed over on 26th

August 1994. It is further pleaded that the plaintiff on various occasions communicated with the applicant-defendants as regards the required permission to be obtained for sale of the property. It is further pleaded that for purpose of title verification, public notice was being issued on 18th August 2017 as regards sale of suit property, giving rise to the cause of action.

4. The defendants have preferred two applications invoking the provisions of Order-VII Rule-11(d) of CPC on the ground of limitation. The trial Court has rejected both the applications, giving rise to the present revision.

5. Learned counsel appearing for the revisional applicant submits that the suit has been filed in the year 2018 for the specific performance of the agreement of sale of the year 1994 and, as such, the same is *ex facie* barred by law of limitation. He would further submit that the cause of action is stated to have arisen in the year 2018, however, at no point of time the plaintiff had demanded the specific performance of agreement of sale, and has now in the year 2018 sought the specific performance of agreement of sale of the year 1994. He seeks to rely upon the decision of the Apex Court in ***Dahiben v. Arvinbhai Kalyanji Bhausale [(2020 7 SCC 366)]*** and the decision of this Court in the case of ***Rajendra v. Harbanssingh***

[2018(6) Mh.L.J. 78].

6. Considered the submissions.

7. The fact is not in dispute that there has been an agreement of sale executed between the parties in the year 1994. The applicant claims that the suit which has been filed in the year 2018 is barred by law of limitation. In that context, if we consider the provisions of Article 54 of the Limitation Act, 1963, the said Article provides for limitation of period of 3 years for seeking the specific performance of contract from the date fixed for performance, and if no such date is fixed, when the plaintiff has notice that the performance is refused.

8. The trial Court while considering the applications has noted the recitals in the agreement for sale and has specifically referred to recitals 5 and 7 thereof, wherein it is mentioned that vendor is having responsibility to get all the requisite permissions for sale from the competent authorities. Recitals 7 shows that after obtaining permission, firstly, the vendor would issue notice and if the vendee fails to pay the remaining amount within fixed period, then, the vendee would not be entitled to claim specific performance. Admittedly, in the present case the vendor has not given any notice after getting permission from the competent authority, as laid down

in recital 7 of the agreement. That being the undisputed position, the limitation would commence after 3 years from the date fixed for performance, i.e., in the present case upon the vendor issuing notice. In the present case, as vendor has not issued any notice to the plaintiff and as such there is no question of the plaint being barred by limitation. The trial Court has rightly considered the recitals in the agreement in the context of provisions of Article 54 of the Limitation Act, 1963. Before this Court the only submission canvassed was as regards limitation. Considering the provisions of Article 54 of the Limitation Act, 1963, in my opinion, it cannot be said that the suit is *ex facie* barred by law of limitation. In any case, considering the facts of the present case, the question of limitation would be a mixed question of fact and law as to whether there was any notice issued by the vendor or whether the performance was called for and was refused.

9. The reliance upon the decision in the case of ***Dahiben (supra)*** does not assist the case of applicant for the reason that the applicant has not been able to demonstrate that the suit is *ex facie* barred by law of limitation.

10. Having regard to the discussion above, the trial Court cannot be said to have exercised the jurisdiction with material irregularity or

illegality so as to warrant interference at the hands of this Court under section 115 of the CPC. The revision application fails and stands dismissed.

11. Needless to clarify that as indicated above, the question of limitation in the present case would be a mixed question of fact and law and the same would be decided after evidence has been led.

[Sharmila U. Deshmukh, J.]