

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

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**APPEAL NO. 149 OF 2021
IN
NOTICE OF MOTION NO. 864 OF 2016
ALONGWITH
INTERIM APPLICATION NO. 2173 OF 2020
IN
APPEAL NO. 149 OF 2021**

Apsara Co-operative Housing Society Ltd.

....Appellant

V/s.

Om Enterprises and Ors.

...Respondents

Ms. Manjiri Shah i/b Ms. Mandakini Kumari Sinh for Appellant.

Mr. Aditya Shiralkar i/b Mr. Parag M. Shah a/w Ms. Poorva Patel for Respondent No.1.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL, JJ.
DATED : 9th JANUARY 2023**

P.C. :

1. Counsel for Appellant/Defendant No.5 submitted that in an application under Order 7 Rule 11 of the Civil Procedure Code taken out by Appellant/Original Defendant No.5, the trial court in the impugned order has even dealt on merits instead of simply considering the averments in the plaint. Counsel states that the court may only observe that the findings in the impugned order are only prima facie findings and does not close issue of limitations raised by appellant. In our view, this is the appeal preferred by Appellant/Original Defendant No.5 against dismissal of Notice of Motion filed by Appellant/Original Defendant No.5 under Order 7 Rule 11 of the

Civil Procedure Code. Therefore, we dispose the appeal with the clarifications that the observations made by the learned single Judge in the order impugned in the appeal are only prima facie observations and defendant will be at liberty to raise issue to prove that the suit is barred by limitation.

2. Appeal disposed.

3. Consequently, Interim Application also stands disposed.

(RAJESH S. PATIL, J.)

(K.R. SHRIRAM, J.)