* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22.02.2023
Date of decision: 20.03.2023

\+ **CS(OS) 318/2020**

MICROTEK LEASING AND FINANCE PVT LTD ..... Plaintiff

Through: Mr.Sumit Bansal, Mr.Udaibir Singh Kochar, Ms.Chandini Mehra, Ms.Tulna Rampal & Mr.Varun Rajawat, Advs. with Mr.Praveen Mangal, AR through VC.

versus

NISHA CHHIKARA ..... Defendant

Through: Mr.Ashim Shridhar & Mr.Shashi Pratap Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT

I.A. 13371/2022

1. This application has been filed by the defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') praying for rejection of the plaint on the ground of the suit being barred by the law of limitation.

2. The present suit has been filed by the plaintiff praying for a decree of Specific Performance of the Agreement to Sell dated 17.01.2015 and receipt dated 17.01.2015 in respect of the suit land being 1/8th share of agriculture land measuring 142 bigha (i.e. 335 biswas (16 Bigha and 15 biswas)], out of Khasra Nos.32//14(0-19), 15(4-4), 16(1-17), 25(0-7), 26(0-1),33//11(4-16), 19(6-12), 20(4-8), 21 (3-6), 40//7(2-13), 13(4-16). 14(4-13). 15(1-10), 64//25(5-1 0). 63//21

(4-8), 70//24/1 (0-6), 71//4(3-13), 5(4-16), 7(6-5). 72//1(4-16), 72//2/1 (2-0), 75//23(4-16), 24(4-16), 78//20(2-13), 79//3(4-16), 4(4-16), 7(4-16), 8(4-16), 13(4-16), 14(4-16), 16(4-16), 17(4-16), 18(4-16), 40//4/1(1-17), 40//8/2(4-0), 40//9/2(1-0) situated in the Revenue Estate of Village Dariyapur Kalan, Delhi-110039 (hereinafter referred to as the 'suit land').

3. In the suit, it is the case of the plaintiff that in the month of October 2014, Shri Jagpal Chikara, the husband of the defendant, approached Shri Om Prakash Gupta, the Director of the plaintiff, for a loan of Rs. 2,24,00,000/- in favour of his wife, the defendant herein. As Shri Chikara was having good relations with Shri Gupta, a loan was provided to the defendant on an assurance that the same shall be returned within a period of three months from the date of its disbursal. The plaintiff claims that the loan amount was disbursed in the name of the defendant vide cheques dated 24.10.2014 for a sum of Rs. 80,00,000/-; cheque dated 25.10.2014 for a sum of Rs. 85,00,000/-; and through RTGS on 25.10.2014 for a sum of Rs. 59,00,000/-.

4. The plaintiff claims that the defendant returned only a sum of Rs. 14,00,000/- of the loan amount on 05.11.2014, thereby leaving a balance of Rs. 2,10,00,000/-.

5. It is further claimed that in January 2015, Shri Chikara approached Shri Gupta and expressed his inability to repay the said loan. He offered that in lieu thereof, the suit land be purchased by the plaintiff. Accordingly, to maintain a good relationship, the offer was accepted, and after due negotiations, the plaintiff entered into an Agreement to Sell dated 17.01.2015 with the defendant whereunder, the defendant agreed to sell the suit land to the plaintiff. The sale consideration was agreed at Rs. 2,51,45,833/-, out of which a sum of

Rs. 2,10,00,000/- was already received by the defendant, thereby leaving a balance of an amount of only Rs. 41,45,833/-, which was to be paid by the plaintiff to the defendant at the time of the execution of the Sale Deed. The said Agreement to Sell duly records that a sum of Rs. 2,10,00,000/- has already been received by the defendant and a receipt dated 17.01.2015 for the said amount was also signed by the defendant acknowledging the receipt of the said amount.

6. The plaintiff further states that in terms of the Agreement to Sell, the defendant was to apply for a No Objection Certificate (in short, 'NOC') from the concerned Tehsildar (Notification), Revenue Authorities, which was a mandatory requirement before the execution of the Sale Deed. In the Agreement to Sell, it was further agreed that the defendant shall intimate the plaintiff about the receipt of the NOC fifteen days in advance before the date of the registration of the Sale Deed for the suit land in favour of the plaintiff.

7. It is averred in the plaint that Shri Chikara approached the plaintiff in the month of December 2015 and asked for signatures of the plaintiff on the application for the grant of the NOC. The same was duly signed by Shri Gupta. Shri Chikara assured Shri Gupta that the NOC shall be immediately applied for before the Revenue Authorities and the same would be available in about a month's time from the date of the filing of the application.

8. The plaint further avers that in the month of February 2016, the plaintiff followed up regarding the status of the NOC with the defendant and her husband. The plaintiff was informed that the NOC had not been applied for yet and would be applied for soon. The plaintiff avers that since Shri Gupta and Shri Chikara were having good relations, there was no reason for Shri Gupta to disbelieve the

defendant and her husband and he, thus, accepted the statements made by them.

9. The plaintiff further avers that from February 2016 to March 2017, the plaintiff had been regularly enquiring the status of the NOC from Shri Chikara, but every time it was informed that the NOC had been applied for and that the same would be available in due course of time.

10. In October 2017, the plaintiff again approached Shri Chikara and was informed that the NOC could not be applied for since there was a proposal for acquisition of the land and there was every likelihood that the same would be rejected by the Tehsildar (Notification). Shri Gupta, in good faith, believed the statement and, therefore, did not press the defendant for the execution of the Sale Deed.

11. It is stated in the plaint that, thereafter, again the plaintiff kept on approaching the defendant and her husband to enquire about the status of the NOC and the execution of the Sale Deed, however, time and again the plaintiff was informed that a portion of the subject land is under acquisition and as such it would be a fruitless exercise to apply for the NOC before the Tehsildar (Notification). The husband of the defendant requested the plaintiff to wait for some time so that the acquisition proceedings can be finalized and thereafter the NOC would be applied for and the Sale Deed shall be executed in favour of the plaintiff.

12. The plaintiff avers that in 2019, the acquisition proceedings were finally initiated by the Ministry of Road Transport and Highways, Government of India, and a notification under Section 3A(1) of the National Highways Act, 1956 (in short, 'the NH Act')

was issued on 08.01.2019. The same was thereafter followed by a declaration under Section 3(D) of the NH Act and an Award was passed on 05.06.2020 by the Competent Authority, Land Acquisition/ADM.

13. On coming to know of the acquisition proceedings being completed, the plaintiff approached the defendant and her husband for applying for the NOC and consequent execution of the Sale Deed for the suit land, excluding the portion of the land under acquisition. The plaintiff also met Shri Chikara on 15.06.2020 and enquired as to when the Sale Deed is proposed to be executed, but the defendant refused to apply for the NOC or execute the Sale Deed in favour of the plaintiff.

14. The plaintiff thereafter served a legal notice dated 14.07.2020 on the defendant. The defendant failed to respond to the same, however, the husband of the defendant came to the house of Shri Gupta on 23.09.2020 and threatened him that if any proceedings were initiated by the plaintiff against him or his wife, it would lead to serious and dire consequences. As the intention of the defendant had turned dishonest, the plaintiff filed the present suit.

15. The plaintiff, in the plaint, pleads the cause of action as under:-

> *"34. That the cause of action for fi1ing of the present suit arose on 15.06.2020 in favour of the Plaintiff and against the Defendant when the Defendant refused to apply for the NOC and execute the sale deed in favour of the Plaintiff. The cause of action further arose on 22.07.2020 when despite receipt of the legal notice and a request for execution of the sale deed, the Defendant did not come forward to execute the sale deed. The cause of action is continuing and subsisting. The cause of action further arose on 23.09.2020, when Sh. Jagpal Chikara, met Sh. Om Parkash Gupta, the Director of the plaintiff and threatened him and asked him to forget about the land as well as the money paid to the Defendant as she*

> *refused to execute the sale deed in favour of the Plaintiff company despite the receipt of the Legal Notice dated 14.07.2020 and threatened to sell the suit property in the market and usurp the entire paid amount under the Agreement dated 17.01.2015."*

16. As noted hereinabove, the defendant has filed the present application stating that the present suit, even on the averments of the plaint, is clearly barred by the law of limitation.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE DEFENDANT:

17. The learned counsel for the defendant submits that in terms of Article 54 of the Limitation Act, 1963, (hereinafter referred to as 'the Limitation Act'), the period of limitation for filing a suit for seeking Specific Performance of an Agreement to Sell for an immovable property, where the date of performance is fixed, shall be three years from the date so fixed for performance. He submits that in the present case, the Agreement to Sell dated 17.01.2015, in terms of Clauses 3, 4 and 8 thereof, clearly provides that the Sale Deed had to be executed on or before 16.10.2015. The suit having been filed only in October 2020, is clearly barred by the law of limitation.

18. He submits that the plea of the plaintiff that as, in terms of Clause 11 of the Agreement to Sell, the defendant was to obtain NOC from the Revenue Authorities for the execution of the Sale Deed and the same having not been obtained, the period of limitation was extended, is incorrect. Failure to obtain the NOC cannot extend the period of limitation. In support of his submission, he places reliance on the judgments of the Supreme Court in ***Fatehji and Company and Anr. v. L.M. Nagpal and Ors.***, (2015) 8 SCC 390; ***T.L.***

Muddukrishana and Another v. Lalitha Ramchandra Rao, (1997) 2 SCC 611; and judgment dated 23.07.2010 in RSA No. 141/2010 titled ***Smt. Naseem v. Ali Mohd*** of this Court.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PLAINTIFF:

19. On the other hand, the learned counsel for the plaintiff submits that the present suit cannot be dismissed *in limine* on the plea of it being barred by limitation. He submits that limitation is a mixed question of law and fact. The plaintiff has averred circumstances whereunder the period of limitation shall extend till the final refusal of the defendant to execute the Sale Deed in 2020. He submits that obtaining a NOC from the Revenue Authorities is a necessary requirement for execution of the Sale Deed in respect of the subject land. The defendant had admittedly not obtained the same and, therefore, due to a good relationship between Shri Gupta, Director of the plaintiff, and Shri Chikara, the husband of the defendant, the time for the execution of the Sale Deed was mutually extended by the parties. He submits that once the time is extended, the period of limitation would begin to run only when the defendant, thereafter, refuses to obtain the NOC and execute the Sale Deed. He submits that the plaintiff has paid more than 90% of the Sale Consideration to the defendant, and the defendant having failed to obtain the NOC, cannot now take advantage of her own wrong.

20. He submits that the extension of period for completion of the sale transaction need not be in writing but can also be inferred from the conduct of the parties. He submits that such conduct is evident also from the fact that the defendant did not address any communication to the plaintiff on the plaintiff's failure to complete

the sale transaction within the time prescribed. In support, he places reliance on the judgments of the Supreme Court in ***Panchanan Dhara and Others v. Monmatha Nath Maity (Dead) Through LRs. and Another***, (2006) 5 SCC 340; and ***S. Brahmanand and Others v. K.R. Muthugopal (Dead) and Others***, (2005) 12 SCC 764.

21. He submits that in any case, for a transaction of an immovable property, time is never of essence. In support, he places reliance on the judgment of the Supreme Court in ***Chand Rani (Smt) (Dead) by LRs v. Kamal Rani (Smt) (Dead) by LRs.***, (1993) 1 SCC 519.

22. He submits that as it was the defendant who was to obtain the NOC first, it was for the plaintiff to either insist on the completion of the transaction within the time prescribed or to extend the time for such performance. The plaintiff having exercised the second option, that is, of extending the time for performance, acted within its rights, and the period of limitation would thereafter run only when the defendant refuses to perform its obligations. In support, he places reliance on the judgment of the Supreme Court in ***Vundavalli Ratna Manikyam and Another v. V.P.P.R.N. Prasada Rao***, (2020) 3 SCC 289.

ANALYSIS AND FINDINGS:

23. I have considered the submissions made by the learned counsels for the parties.

24. At the outset, it is recognized that the plea of limitation is a mixed question of law and fact. The question as to whether a suit for Specific Performance of an Agreement will be barred by limitation or not, would not only depend upon the nature of the agreement but also on the conduct of the parties and also as to how they understood the

terms and conditions of the agreement. It is also established law that for the purposes of consideration of an application under Order VII Rule 11 of the CPC, it is only the averments in the plaint that are to be seen and not the defence of the defendant. Therefore, for the purpose of the present application, I shall be confining my consideration only to the facts stated by the plaintiff in the plaint to determine, if on those facts as stated, the suit is within the period of limitation.

25. Having recognised the above, I must also be mindful that in ***T.Arivandandam v. T.V. Satyapal & Anr.,*** (1977) 4 SCC 467, the Supreme Court has held that if on a meaningful—not formal—reading of the plaint, it is found to be manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court must exercise its powers under Order VII Rule 11 of the CPC. If clever drafting has created the illusion of a cause of action, the Court must nip it in the bud.

26. In ***Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representative & Ors.***, (2020) 7 SCC 366, the Supreme Court reiterated that under Order VII Rule 11 of the CPC, a duty is cast on the Court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint read in conjunction with the documents relied upon, or whether the suit is barred by any law. If on a meaningful reading of the plaint, it is found that the suit does not disclose a right to sue, the cause of action or the suit is barred by any law, the Court has no option but to reject the plaint. The provisions of Order VII Rule 11 of the CPC are mandatory in nature. What is to be determined is whether the plaint discloses a real cause of action, or something purely illusory. A clever drafting of the plaint, if it has created an illusion of a cause of action, should be nipped in the

bud. The Court must be vigilant against any camouflage. Where a suit appears from the averments in the plaint to be barred by any law, the plaint should be rejected.

27. A suit seeking Specific Performance of an Agreement to Sell an immovable property is governed by Article 54 of the Limitation Act. The same is reproduced herein below:

" ***Article 54***

	Description of suit	***Period of limitation***	***Time from which period begins to run***
54	*For specific performance of a contract*	*Three years*	*The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.*

28. Therefore, where the agreement provides for the date of performance, the period of limitation for filing the suit commences from such date, and is of three years from such date.

29. In ***T.L. Muddukrishana and Another*** *(supra),* the Supreme Court has held that under the first part of the Article 54 of the Limitation Act, once the date for performance of the contract has been fixed by the parties, the limitation begins to run from that date and Specific Performance of the Contract could be held within three years from that date unless the parties by an agreement extend the time fixed. The question as to whether or not time is of the essence of contract is not of much relevance where the case falls in the first part of the Article 54 of the Limitation Act. I may quote from the judgment as under:-

> ***"5.*** *It is seen that limitation under Section 3 of the Limitation Act is one of the defences available to the defendant. Article 54 of the*

> *Schedule to the Limitation Act postulates that for specific performance of a contract the period of limitation is three years from the date fixed for the performance, or, if no such date is fixed, from the date the plaintiff has notice that performance is refused. Under first part of Article 54, once the date for performance of the contract has been fixed by the parties, the limitation begins to run from that date and specific performance of the contract could be had within three years from that date unless the parties by an agreement extend the fixed time. In this case, date was fixed for performance, i.e., 28-5-1989. The question whether or not time is the essence of the contract is not of much relevance since the case falls in the first part of Article 54……"*

30. In ***Fatehji and Company and Another*** *(supra),* the Supreme Court further held that Article 54 of the Limitation Act does not make any difference between a case where possession of the property has been delivered in part performance of the contract or otherwise. Even if any permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendant has not obtained the said permission would not lead to an inference that no cause of action for filing the suit for specific performance arose. On the facts of that case, it was held as under:-

> ***"6.*** *The fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the limitation of filing the suit for specific performance. In fact both the courts below have rightly held that Article 54 of the Limitation Act does not make any difference between a case where possession of the property has been delivered in part-performance of the agreement or otherwise. In the same way the courts below have also concurrently held even if any permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendants have not*

obtained the said permission would not lead to inference that no cause of action for filing the suit for specific performance would arise. Further it is also not the case for postponing the performance to a future date without fixing any further date for performance. The last extension for a period of six months w.e.f. 1-8-1976 sought for by the defendants expired on 1-2-1977. The present suit seeking for specific performance was filed by the plaintiffs on 29-4-1994, much beyond the period of three years.

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***8.** The plaintiffs averred in the plaint that the last and final cause of action accrued and arose to them after August 1991 when the defendants succeeded in hiding themselves and started avoiding the plaintiffs and the cause of action being recurring and continuous one, they filed the suit on 29-4-1994. As already seen the original cause of action became available to the plaintiffs on 2-12-1973, the date fixed for the performance of the contract and thereafter the same stood extended till 1-2-1977 as requested by the defendants. Though the plaintiffs claimed that oral extension of time was given, no particulars as to when and how long, were not mentioned in the plaint. On the other hand even after knowing the dishonest intention of the sons of the second defendant with regard to the suit property in the year 1985, the plaintiffs did not file the suit immediately. The suit having been filed in the year 1994 is barred by limitation under Article 54 of the Limitation Act."*

31. In ***Chand Rani (Smt) (Dead) by LRs*** *(supra),* the Supreme Court, while acknowledging that it is a well accepted principle that in the case of sale of an immovable property time is never regarded as the essence of the contract and, in fact, there is a presumption against the time being the essence of the contract, further held that the Court may infer the time to be of essence of the contract where the contract expressly stipulates the time for performance.

32. In ***S. Brahmanand and Others*** *(supra),* the Supreme Court held that even where the time for performance is fixed in the Agreement, the same may be extended and such an agreement of extension need not necessarily be reduced in writing, but may be proved by oral evidence or, in some cases, even by evidence of conduct including forbearance on the part of the other party. Where there is a variation in the date of performance by express representation by the defendant, agreed to by the act of forbearance on the part of the plaintiff, what was originally covered by the first part of Article 54 of the Limitation Act, would now fall within the purview of the second part of the said Article.

33. In ***Panchanan Dhara and Others*** *(supra)*, the Supreme Court reiterated that the extension of time for performance of a contract is not necessarily to be inferred from the written document; it could be implied as well. The conduct of the parties in this behalf is relevant. It was further held that the performance of a contract may be dependent upon several factors including grant of permission by the statutory authority in appropriate cases. If a certain statutory formality is required to be complied with or permission is required to be obtained, a deed of sale cannot be registered till the said requirements are complied with. In a given situation, the vendor may not be permitted to take advantage of his own wrong in not taking steps for complying with the statutory provisions and then to raise a plea of limitation.

34. I shall now apply the above tests to the facts of the present case. Clauses 3,4 and 8 of the Agreement to Sell are reproduced herein below:

> *"3. That the Completion of the said bargain is fixed for a period upto 9 Months from the date of execution of this agreement 17.01.2015 i.e. upto 16.10.2015.*

4. That if the First Party refuses/backs out to sell the said land to the Second Party or his nominee/ Company as per the terms of this Agreement within the specified period then the Second Party will be empowered to get the Sale Deed registered through court of law under Specific Re1ief Act.

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8. That the First Party will be bound to execute the Sale Documents in respect of the said Land in favour of the Second Party or his nominees/ Company/ Any person of its choice on or before the specified period."

35. A reading of the Clauses 3,4 and 8 of the Agreement to Sell leaves no iota of doubt that it is the first part of Article 54 of the Limitation Act that would apply to the facts of the present case. The outer date of performance having been fixed as 16.10.2015, the period of three years prescribed as limitation for filing of the suit would expire on 16.10.2018.

36. The plaintiff claims that as obtaining the NOC from the Revenue Authorities is a pre-condition for the registration of the Sale Deed, and as the said NOC was not obtained by the defendant, the time for the performance was put at large. The said submission cannot be accepted. Clause 11 of the Agreement to Sell relied upon by the learned counsel for the plaintiff is reproduced herein below:

"11. That the First Party/s shall obtain the necessary No Objection Certificate, from the concerned Tehsildar (Notification), Delhi and intimate the Second Party atleast 15 days before the date of execution and registration of the said land in favour of Second Party and his nominee/ company."

37. A reading of the above Clause would show that the defendant was to obtain the necessary NOC at least fifteen days before the date of execution and registration of the Sale Deed. The said Clause,

however, cannot be read as enlarging the time for execution of the Sale Deed from what is expressly provided in the Agreement to Sell itself. It is not stated in the said Clause that in case such NOC is not obtained by the defendant, the time for the execution of the Sale Deed shall stand extended. In fact, the failure of the defendant to obtain the NOC at least fifteen days prior to the outer date of performance of the Agreement to Sell, that is, 16.10.2015, itself will be a breach of the Agreement by the defendant, entitling the plaintiff to institute a suit for seeking Specific Performance. The same certainly cannot extend the period of limitation. As held in ***Fatehji*** *(supra)*, even if the permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendant has not obtained the said permission would not lead to an inference that no cause of action for filing the suit for Specific Performance would arise or that the same has been postponed to a future date. The facts of each case would have to be seen to determine whether the parties agreed to an extension of time for performance.

38. In the present case, the plaintiff in its plaint, as far as the NOC is concerned, has pleaded as under:

> *"9. That, in terms of the said Agreement, the Defendant was to apply for a No Objection Certificate (NOC) from the concerned Tehsildar (Notification), Revenue Authorities, which was a mandatory requirement before the execution of the Sale Deed. It was also agreed that the Defendant shall intimate to the Plaintiff about the receipt of the No Objection Certificate, 15 days in advance, before the date of the execution and registration of the aforesaid suit land in favour of the Plaintiff. It would be pertinent to mention herein since the land was an agricultural land, the sale deed in respect thereto could only be executed after obtaining the statutory No Objection*

Certificate from the office of the Tehsildar (Notification), Revenue Authorities.

10. That, the husband of the Defendant approached the Plaintiff in the month of December 2015 and asked for signatures of the Plaintiff on the application for applying the NOC. The said application was duly signed by the Plaintiff through its Director Sh. Om Prakash Gupta. It was assured that the NOC shall immediately be applied and the same would be available in about a month's time from the date of filing with the office of the Revenue Authorities.

11. That, in the month of February 2016, the Plaintiff followed up the status of the NOC with the Defendant and the husband of the Defendant and it was informed to the Plaintiff by the Defendant and her husband that the same had not been applied yet and would be applied soon.

12. That since Sh. Om Prakash Gupta, the Director of the Plaintiff and Sh. Jagpal Chikara, the husband of the Defendant were having good relations, thus, there was no reason for the above named Sh. Om Prakash Gupta to disbelieve them and bonafide accepted the statements made by them.

13. That since, February 2016 to March 2017, the Plaintiff has been regularly enquiring the status of the No objection certificate, from Sh. Jagpal Chikara but every time, it was informed that the NOC has been applied and the same will be available in due course of time.

14. That thereafter, in and around October, 2017, the Plaintiff again approached Sh. Jagpal Chikara to enquire the status of NOC. It was informed to Sh. Om Prakash Gupta that the NOC could not be applied till now, since there is a proposal for acquisition of the land and there is every likelihood, that the same would be rejected by the Tehsildar (Notification).

15. That in good faith, the aforesaid statement made by Sh. Jagpal Chikara was again believed by Sh. Om Prakash Gupta and *accordingly, the Plaintiff did not force the Defendant for the execution of the Sale Deed.*

16. That all along, the aforesaid period the Plaintiff was ready and willing to get the Sale Deed executed in its favour and was ready with the balance sale consideration of Rs. 41,45,833/- (Rupees Forty One Lacs Forty Five Thousand Eight Hundred Thirty Three only) subject to obtaining of the NOC from the Tehsildar (Notification).

17. That thereafter, again the Plaintiff kept on approaching the Defendant and her husband to enquire about the status of NOC and the execution of the Sale Deed but time and again, the Plaintiff was informed that a portion of the land subject matter of the Agreement to Sell is under acquisition and as such, it would be a fruitless exercise to apply the NOC before Tehsildar (Notification). Again, Sh. Jagpal Chikara requested the Plaintiff to wait for some more time so that the acquisition proceedings be finalised and thereafter the NOC would be applied and the sale deed shall be executed in favour of the Plaintiff.

18. <u>That finally in 2019, the acquisition proceedings were initiated by the Ministry of Road Transport and Highways,</u> Govt. of India and a Notification under Section 3A(1) was issued on 08.01.2019. Thereafter, the same was followed up by a Declaration under Section 3(D) of the National Highway Act and consequently, an Award was passed on 05.06.2020 by the Competent Authority Land Acquisition/ADM.

19. That the Plaintiff, on coming to know, of the acquisition proceedings being completed, approached the Defendant and Sh. Jagpal Chikara for applying the NOC and consequent execution of the sale deed for the suit land, excluding the portion of the land under acquisition. It will be pertinent to mention herein that an area of approx..1000 square yards i.e. 20 biswas approx. out of khasra no. 40//7(4-03), 14 min (0-03) and 15 min (3-12) has been acquired under the aforesaid Award.

> *20. That the Plaintiff through Sh. Om Prakash Gupta met the Defendant and Sh. Jagpal Chikara on 15.06.2020 and enquired about as to when the sale deed is proposed to be executed in favour of the Plaintiff for the remaining land after the acquisition of the land but the Defendant refused to apply for NOC and consequently for execution of the sale deed in favour of the Plaintiff."*
>
> (Emphasis supplied)

39. A reading of the above averments in the plaint would show that though the plaintiff asserts to have signed an application for obtaining the NOC from the Revenue Authorities in December, 2015, it also admits that in February, 2016 it was informed that the defendant had not applied for the NOC till then. This was clearly a breach of the Agreement by the defendant. In the plaint it is not even stated whether the defendant offered any explanation/cause for not applying for the NOC leave alone seeks extension of time to apply for the same. If not earlier, the cause of action to file the suit, therefore, arose on this date. The plaintiff states that it did not take any action even thereafter due to good relations between the Director of the plaintiff and the husband of the defendant, however, once the period of limitation has begun to run, it cannot stop on such flimsy ground.

40. From February, 2016 to March, 2017, the plaintiff claims to have regularly inquired regarding the NOC from the defendant and her husband and to have been informed that the NOC has been applied for and will be available in due course. In the same breath, the plaintiff states that in and around October, 2017 it was informed that the defendant has not applied for the NOC even till that date. In spite of the defendant having misled the plaintiff for a period of more than one year, the plaintiff did not file the suit.

41. The plaintiff states that the defendant gave an explanation for its default in applying for the NOC stating that some Land Acquisition proceedings were in contemplation. There cannot be a more fanciful explanation than this. In fact, admittedly, there were not land acquisition proceedings initiated against the Suit land or part thereof till 2019. The above justification for not filing of the Suit, therefore, is most fanciful. From 2017 to 2019, there is again no explanation as to why the plaintiff chose not to institute the suit against the defendant.

42. Section 63 of the Indian Contract Act, 1872 also cannot come to the aid of the plaintiff as in the Agreement to Sell there were reciprocal promises; the plaintiff was to pay the balance sales consideration to the defendant on or before 16.10.2015. The plaintiff cannot unilaterally extend this period by placing reliance on Section 63 of the Contract Act.

43. On the above averments, the plaintiff, therefore, has not been able to make out any case of an agreement for extension of time for completing the sale transactions. In fact, it is not even the case of the plaintiff that the defendant ever requested the plaintiff for extension of time to perform its obligations under the Agreement. If the case set up by the plaintiff is to be believed, Article 54 of the Limitation Act, can be negated by a party by simply stating that the time for performance of the agreement was extended on an oral understanding with the defendant; though the facts clearly speak to the contrary. The provision of Article 54 of the Limitation Act cannot be allowed to be put at naught on such vague and frivolous pleadings. It must be remembered that in today's date and time, the price of land increases exponentially over the period of time. The plaintiff by sleeping over its rights, cannot later, at its own pleasure, claim a right over the land

long after the period of limitation has expired. As held by the Supreme Court in ***T.Arivandandam*** *(supra)* and ***Dahiben*** *(supra)*, the Court would have to give a meaningful reading to the averments in the plaint and mere pretence of a cause of action would not be allowed to burden the defendant of defending a claim which is *ex facie* barred by the law of limitation.

44. In ***S. Brahmanand*** *(supra)*, the Court found that the defendants therein by a letter dated 18.06.1992 had made a request to the plaintiff for postponing the performance of the agreement to a future date without fixing any further date for performance. The same was accepted by the plaintiffs therein by their act of forbearance and by not insisting on performance forthwith. It was in those facts that the Court held that what was originally covered by the first part of Article 54, would now fall within the purview of the second part of the Article because of the supervening circumstances of the case. The same cannot be said in the present case. In the present case, there is no written communication from the defendant seeking enlargement of the time for performance of the obligation under the Agreement to Sell. In fact, it has not even been alleged that the defendant requested the plaintiff to enlarge the time for performance on their account. On the other hand, from the averments in the plaint reproduced hereinabove, it would be apparent that it is the case of the plaintiff itself that the defendant till October 2017 had misled the plaintiff into believing that she had applied for the NOC. What is not, however, stated is as to why the plaintiff would still believe the defendant and not file the Suit. The judgment in ***S. Brahmanand*** *(supra)*, therefore, has no application to the facts of the present case.

45. In ***Vundavalli Ratna Manikyam*** *(supra)*, the Court found that after the Agreement to Sell had been executed on 07.05.1981, prescribing the period of four months for payment of the balance sale consideration, and thereafter the parties extending the same by a further period of eight months, the State Government initiated the land acquisition proceedings for acquiring the said property. The Court further found that the vendor as also the vendee made representations for deleting the suit property from the proposed land acquisition, wherein even the vendor admitted that he had sold the suit land to the vendee for consideration and delivered possession of the land to the vendee. The Court also found that under the Agreement to Sell, it was for the vendor to settle all the disputes in relation to the property. In those peculiar facts, the Court found that the time for performance under the Agreement to Sell, therefore stood extended and Article 113 of the Limitation Act would apply. The same, however, cannot be said in the present case as no such circumstances have been made out by the plaintiff.

46. In ***Panchanan Dhara and Others*** *(supra),* after the execution of the Agreement to Sell, the vendor therein instituted a suit against some persons who were claiming title over the suit property. The Court found that the time for performance of the Agreement to Sell had been extended by the parties. The Court held that in a given situation, the vendor may not be permitted to take advantage of its own wrong in not applying for the statutory permissions. The factual situation was, therefore, entirely different in that case.

47. The fact that the plaintiff has allegedly paid more than 90% of the sale consideration under the Agreement to Sell to the defendant is also not relevant for the purposes of determining whether the suit is

barred by the limitation. It is not for this Court to hazard a guess as to what prevented the plaintiff from enforcing its rights under the Agreement to Sell in spite of having paid more than 90% of the sale consideration to the defendant, as claimed. The Court is only to determine whether the suit as filed is within the period of limitation as prescribed. Once the period has begun to run, it cannot be stopped, and a suit which is barred by the limitation cannot be entertained on the ground of equity.

48. In view of the above, I find that the present suit is clearly barred by the law of limitation. The plaint is accordingly rejected under Order VII Rule 11 (d) of the CPC.

49. The application is allowed in the above terms.

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50. In view of the above order, the suit and the pending application are dismissed as being barred by limitation.

51. There shall be no order as to costs.

NAVIN CHAWLA, J

MARCH 20, 2023/rv/Arya/KP/DJ