



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD**

**CIVIL REVISION APPLICATION NO. 183 OF 2023**

- (1) Mohammad Iqbal Mohammad Hanif Qureshi
- (2) Asif Mohammad Hanif Qureshi
- (3) Mohammad Rauf Mohammad Hanif Qureshi
- (4) Mohammad Rizwan Mohammad Hanif Qureshi
- (5) Banubee Mohammad Hanif Qureshi
- (6) Irfaana Bilal Masurkar

**... APPLICANTS**

(Ori. Defendants)

**VERSUS**

- (1) Sanjeev Kameshwarnath Awasthi

**... RESPONDENT**

(Ori. Plaintiff)

...

Mr. Ameya N. Sabnis – Advocate for Applicants

Mr. R.S. Pawar – Advocate for Respondent

....

**CORAM : SANDIPKUMAR C. MORE, J.**

**DATE : 19<sup>th</sup> July, 2024**

**ORDER :**

1. The applicants who are the original defendants in Special Civil Suit No.11 of 2021 had challenged the order dated 27.04.2023 below Exhibit – 34 in the aforesaid suit passed by the 2<sup>nd</sup> Civil Judge Senior Division, Vaijapur, Dist. Aurangabad (*“the learned Trial Court” for short*). Under the impugned order, application at Exhibit – 34 filed by original defendant No.4 -

Mohammad Rauf Mohammad Hanif Qureshi for rejection of plaint under Order VII Rule 11 of Civil Procedure Code has been rejected.

2. On perusal of the documents it appears that, the present respondent i.e. original plaintiff has instituted aforesaid Special Civil Suit No.11 of 2021 for Specific Performance of Contract dated 20.06.2003 whereby defendant Nos.1 and 4 had agreed to sale the suit land mentioned in aforesaid suit to him for the consideration mentioned in the said agreement of sale. Defendant No.4 then filed the application (Exhibit – 34) for rejection of plaint under Order VII Rule 11 (D) of Civil Procedure Code contending that, the suit is barred by limitation as the respondent/plaintiff is claiming Specific Performance of Contract of the agreement of sale executed in the year 2003, in the year 2021.

3. Learned Counsel for the applicants submits that, admittedly, agreement of sale executed by defendant No.1 on 20.06.2003 but since the last installment of consideration amount was to be paid on 10.10.2003, it has become time barred as the remaining consideration could not be paid by plaintiff within stipulated time. Thus, according to him, time was made essence of that contract but since the consideration amount could not be paid as per

scheduled time, the present suit being filed much after 10.10.2003 i.e. beyond period of three years, is barred by Limitation Act as per Article 54. He pointed out that, the learned Trial Court directly jump to the conclusion on the basis of subsequent document executed by defendant No.4 in form of receipt, that he was ready and willing to perform the earlier contract.

4. On the contrary, learned Counsel for respondent/plaintiff strongly opposed the submissions made on behalf of the applicants/defendants. According to him, though there was time fixed for paying the remaining consideration amount in the earlier agreement of sale dated 20.06.2003, but by execution of subsequent documents the limitation period has been revived in the year 2021 and therefore, the present suit filed by the plaintiff is well within limitation.

5. Heard rival submissions and also perused the documents on record.

6. Admittedly, the last date of paying the last installment of consideration under agreement of sale dated 20.06.2003 was 10.10.2003. As such, the normal period of limitation as per Article 54 of the Limitation Act had started from that date for further

period of three years. However, it is extremely important to note that, only the averments in plaint are to be considered to see whether the plaint is liable to be rejected under Order VII Rule 11 of Civil Procedure Code. Here the applicants are claiming rejection of the plaint filed by respondent/plaintiff only on the ground of limitation.

7. On perusal of the plaint it appears that, respondent/plaintiff has specifically mentioned that though the last date of receiving balance consideration amount was mentioned as 10.10.2003 in the agreement of sale in dispute, but the original defendant No.4 on 14.01.2018 and 27.01.2020 had accepted amounts of Rs. 50,000/- and Rs.1,00,000/- respectively and also executed written receipts to that effect whereby the limitation period for executing the sale-deed has been revived. Moreover, the plaintiff has also mentioned in paragraph No.11 of the plaint that, he had informed the applicants/defendants for not to create any third party interest over the suit property vide notice dated 28.03.2021, but they did not respond and therefore, cause of action for filing the suit arose. It is significant to note that, as per Article 54 of the Limitation Act, the limitation period for filing suit for Specific Performance of Contract is of three years and the period of limitation starts

running from the date when plaintiff has notice when the performance is refused by the defendants. In the instant case, plaintiff has also filed on record written receipts in respect of execution and acceptance of part consideration amount towards the transaction in dispute dated 14.01.2018 and 27.01.2020. On perusal of the copies of said receipts, it appears that defendant No.4 – Mohammad Rauf Mohammad Hanif Qureshi has accepted further consideration towards the earlier transaction of 20.06.2003 and also undertaken to complete the transaction as agreed before. Therefore, considering these facts the aspect of limitation involved in this matter is mixed question of facts and law, and it can be clarified only after leading the evidence. Thus, the plaint cannot be rejected at this juncture on the ground of limitation. Therefore, the order of learned Trial Court rejecting the application under Order VII Rule 11 of Civil Procedure Code at Exhibit – 34 needs no interference. Accordingly, the present application stands rejected.

8. The Civil Revision Application is accordingly disposed of.

**[ SANDIPKUMAR C. MORE ]**  
**JUDGE**