



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

923 CIVIL REVISION APPLICATION NO. 175 OF 2023

JAGDISH VASUDEO AGRAWAL
VERSUS
VINAYKUMAR RIKHABCHAND KOTHARI

...
Mr. Milind K. Deshpande – Advocate for Applicant

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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 7th March, 2024

PER COURT :

1. Heard learned Counsel for applicant substantially at admission stage. The applicant who is the original defendant is challenging the order dated 04.08.2023 passed by the learned Trial Court i.e. 2nd Joint Civil Judge Senior Division at Jalna below Exhibit – 11 i.e. application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure in Special Civil Suit No.110 of 2021.

2. The documents on record indicates that, the applicant had sought rejection of the plaint on two grounds i.e. no cause of action shown by respondent/plaintiff and that the suit of

the plaintiff was hopelessly barred by limitation as it was filed for Specific Performance of Contract dated 13.09.2010 after about ten years.

3. The learned Counsel for applicant relied upon the judgments of Hon'ble Apex Court as follows :

(a) **M/s. Sree Surya Developers and Promoters Vs. N. Sailesh Prasad** reported in *AIR 2022 SC 1031*

(b) **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs** reported in *AIR 2019 SC 1430*

The sum and substance of the aforesaid judgments is that, for considering the application for rejection of plaint only the averments in the plaint and the documents relied upon by the plaintiff filed alongwith the plaint are to be considered. Moreover, mere clever drafting would not permit plaintiff to bring the suit within limitation which is barred by law. However, in the instant matter the disputed agreement nowhere indicates that, the time was made essence of contract for its specific performance.

4. On perusal of the plaint, it appears that the

respondent/plaintiff pleaded that, he was always ready and willing to perform his part of contract but present applicant/defendant on number of occasions sought time to execute the sale-deed. Learned Counsel for applicant submits that, such type of pleading is entirely false on the part of respondent/plaintiff. However, it has to be ascertain on the basis of evidence and by not merely rejecting the same, at such preliminary stage. The cause of action is specifically mentioned in the paragraph No.9 of the plaint and, therefore, when in the disputed contract, time is not made essence, the plaint cannot be rejected for want of cause of action and being barred by limitation.

5. In view of the same, the Civil Revision Application stands rejected at admission stage and disposed of accordingly.

[SANDIPKUMAR C. MORE]
JUDGE