

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2473 OF 2023

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Anna Audambar Koli & Anr.

... Petitioners

V/s.

Nagnath Shankar Dhere
(Since Deceased) through
Legal heirs & Ors.

... Respondents

Mr. Samir Kumbhakoni, for Petitioners.

CORAM : AMIT BORKAR, J.

DATED : JULY 10, 2024

P.C.:

1. The petitioners are the original defendants in a suit for specific performance who are challenging an order passed by the Trial Court rejecting an application under Order 7, Rule 11(d) of the Code of Civil Procedure, 1908 (for short 'CPC') .
2. The respondents filed Regular Civil Suit No.90 of 2012 seeking specific performance of agreement to sale executed on 15th March 2001. As per the terms of agreement, the defendants were under obligation to execute sale deed after getting permission from the competent authority. The respondents filed suit in 2012.
3. The petitioners, therefore, filed an application under Order 7, Rule 11(d) of the CPC contending that the agreement to sale in

question was allegedly executed in the year 2001 whereas respondents filed suit in the year 2012. Article 54 of the Limitation Act, 1963 provides period of three years for filing suit for specific performance. Therefore, according to the petitioners, the suit is barred by law of limitation.

4. The Trial Court rejected the application by the impugned order. The Trial Court observed that the limitation will start from the date when the plaintiffs have notice of refusal. Under the terms of agreement and power of attorney, the responsibility to get permission was on the plaintiffs. The plaintiffs obtained permission in the year 2010. Therefore, the Trial Court rejected the petitioners' application.

5. Mr. Kumbhakoni, learned advocate for the petitioners submitted that in the facts of the case, the respondents were under the obligation to seek permission from the competent authority and their failure to obtain permission and filing of suit within three years from the date of agreement, takes away respondents right to file suit for specific performance.

6. It is well settled that while considering an application under Order 7, Rule 11(d) of the CPC what is required to be seen by the Court is the averments of the plaint along with the documents which are made part of the plaint. In the facts and circumstances of the case, it is not in dispute that the date of executing of the sale deed is not mentioned in the agreement to sale. Therefore, suit will be governed by Part-II of Article 54 of the Limitation Act. Whether the plaintiff had notice of refusal and which event

constitutes refusal are essential questions of fact which the Trial Court needs to adjudicate upon allowing parties to lead evidence in support of their pleadings. From the averments in the plaint along with documents annexed with the plaint, no conclusive opinion can be formed that the suit on the face of it is barred by the limitation. Hence, in my opinion, the impugned order does not suffer from error of law. The writ petition stands dismissed.

7. However, it is made clear that the Trial Court shall decide the issue of limitation uninfluenced by the observations made in the impugned order or this order.

(AMIT BORKAR, J.)