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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 766 OF 2023
WITH
INTERIM APPLICATION NO. 6703 OF 2024**

Mr. Shivaji Dnyanu Phadtare and Others... Appellants/Applicants

Vs.

Shri Chandrakant Anandrao Ghorpade ... Respondent

Mr. Pradeep Gole a/w. Mr. Suraj Shejwal for the Appellant.

CORAM : GAURI GODSE, J.

DATE : 3rd SEPTEMBER 2024

ORDER :

1. Heard learned counsel for the appellants. The Second Appeal is admitted on the following substantial questions of law :

(i) Whether the suit can be said to be filed within the period of limitation, in as much as, the suit agreement is dated 7th September 2001 and the suit for specific performance is filed after almost a period of 13 years on 1st January 2014 ?

(ii) Whether in the absence of any specific terms and conditions in

the suit agreement casting any obligation on the part of the defendant to obtain permission for execution of sale deed, the plaintiff would get any benefit for the period of limitation to be counted after the suit notice was issued by the plaintiff ?

(iii) Whether the First Appellate Court erred in ignoring material evidence in the form of admission by the plaintiff in paragraph 11 of the cross examination which would indicate that the receipts regarding repayment of defendant's loan were misused by the plaintiff for seeking specific performance of the suit agreement ?

(iv) Whether the refusal to execute the agreement in response to the plaintiff's notice can be said to be the cause of action for filing the suit for specific performance after a period of 13 years ?

(v) Whether reversal of the finding recorded by the trial court in paragraph 28 of the judgment would amount to misappreciation of the facts and evidence on record by the First Appellate Court ?

(vi) Whether refusal by the Sub-Divisional Officer conveyed to the plaintiff on 19th January 2007 for permission to sell the property would amount to the relevant date for reckoning the period of limitation as

contemplated under Article 54 of the Limitation Act and thus the suit filed in the year 2014 would be barred by law of limitation ?

2. In addition to court notice, learned Advocate for the appellants to serve the respondents by private service and file service affidavit.
3. Call for record and proceedings.
4. Printing is dispensed with.
5. Learned Advocate for the appellant shall file private paper book within one year from today.

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6. Rule in terms of prayer clause (a) is made returnable on 2nd December 2024.
7. In addition to court notice, learned Advocate for the applicants to serve the respondents by private service and file service affidavit before the next date.
8. Till next date there will be ad-interim stay in terms of prayer clause (b).

[GAURI GODSE, J.]