

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL(ST) NO. 21483 OF 2024
WITH
INTERIM APPLICATION NO. 11619 OF 2024
IN
SECOND APPEAL(ST) NO. 21483 OF 2024**

Almas Banoo Kadri ... Appellant/Applicant

vs.

Fahim Abdul Rehman Dalvi ... Respondent

Mr. A.H. Khatri, for Appellant.

Mr. Sandeep Mishra, for Respondent.

CORAM : GAURI GODSE, J.

DATED : 27th AUGUST 2024

ORDER:

1. Heard the learned counsels for the parties. The Second Appeal raises the following substantial questions of law:

- I) Whether the plaint could have been rejected on the ground that the suit was barred by limitation though there was a specific cause of action pleaded in paragraph no. 26 of the plaint which indicates that according to the plaintiff the cause of action arose on 24th July 2022?

II) Whether in view of the pleadings in the plaint the point of limitation would amount to a mixed question of law and fact which could have been decided on the application filed for rejection of plaint under Order VII, Rule 11 of the Civil Procedure Code, 1908?

III) Whether the reasons recorded in the impugned judgment would amount to misappreciation of the facts and the relevant applicable law regarding the issue of limitation?

2. Issue notice for final disposal at admission stage on the above questions of law. Notice is made returnable on 18th November 2024.

3. Mr. Mishra, waives notice on behalf of the sole Respondent.

4. The learned advocate for the appellant shall file private paper-book within a period of four weeks from today.

5. Learned counsel for the respondent opposes continuation of ad-interim protection. He submits that there is already an order of eviction against the appellant passed by the Competent Authority under the Maharashtra Rent Control Act, 1999. He therefore submits that as a condition for granting protection to the appellant's possession, the appellant be put to terms directing her to make

payment towards some amount.

6. Learned counsel for the appellant submits that as per the suit, the agreement of total consideration for the transaction was Rs. 20,00,000/- out of which the appellant has paid Rs. 15,00,000/-. He submits that he will take necessary instructions regarding securing the balance amount of Rs. 5,00,000/-.

7. Learned counsel for the respondent disputes that the appellant has paid an amount of Rs. 15,00,000/-. Learned counsel for the appellant seeks time to take instructions regarding securing the amount of balance consideration.

8. The respondent is at liberty to file an affidavit-in-reply opposing grant of any interim relief. Though the appeal is directed to be listed for final disposal at the admission stage on 18th November 2024, the grant of interim protection will be heard on 25th September 2024. Hence, list the application for extension of interim relief on 25th September 2024.

9. Till next date, ad-interim protection already granted to continue.

(GAURI GODSE, J.)