

Item No.3
10.09.2025
Court. No. 1
SP/CP

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

CO/198/2024
ARUN KUMAR SRIVASTAVA @
ARUN KUMAR SHRIVASTAVA
AND ORS
VS
AJOY KUMAR GOYEL

Mr. Subham Ghosh, Adv.
Mr. Mayank Roy, Adv.

... for the Appellants.

Mr. Rajat Das, Adv.
Miss. Srijana Thapa, Adv.

...for the opposite party.

1. The petitioners are the heirs of the original defendant Kamla Prasad Srivastava, in Title Suit No.101 of 2014. The suit was filed by the petitioner for specific performance of contract, declaration, permanent junction and other consequential reliefs, before the learned Civil Judge (Senior Division) at Siliguri.
2. An application for rejection of the plaint on the ground that the suit was hopelessly barred by limitation, was dismissed by the learned Trial Judge. A revisional

application was preferred under Section 115A of the Code of Civil Procedure.

3. The learned Additional District Judge Second Court at Siliguri dismissed the revisional application being Civil Revision No.08(12) of 2016 by order dated July 26, 2024.
4. The order passed by the Courts have been challenged before this Court, on the following grounds:
 - a) The learned Courts failed to take into consideration that the agreement provided that the contract was to be performed within 30th March, 2008.
 - b) Time was always the essence, which was lost sight of.
 - c) The covenants of the said agreement clearly provided the reliefs which would be available to a party, on account of non-compliance by the other.
 - d) The parties had agreed that in case of failure on the part of the defendant to comply with his obligation, the plaintiff would be entitled to refund of the earnest money and in case of failure of

the plaintiff to execute the deed upon payment of the balance amount, the defendant was entitled to compensation by way of damages.

- e) The agreement did not in any way envisage filing a suit for specific performance thereof.
- f) The first limb of Article 54 of the Limitation Act would be applicable in this case, as a period was fixed for performance. Even assuming that the period was extended once at the request of the original defendant, the cause of action would arise after the period of first extension had expired.
- g) The letter written by the defendant's advocate, informing the plaintiff that the agreement had expired on account of lapse of time, could not be the date of accrual of the cause of action.
- h) The plaint clearly indicated that the plaintiff was sitting idle from August 2008 till 2014, when the suit was filed. Almost six years had passed since the last alleged extension as per the plaint case, before the suit was filed.

i) A meaningful reading of the plaint would clearly indicate that the cause of action was not disclosed and the cause of action pleaded in paragraph 13 could not be taken into account, inasmuch as, the letter dated July 25, 2014, could not be treated as the first refusal to perform the contract by the defendant.

j) The fact that the defendant did not take any steps after receiving the cheque in July 2008, would amount to refusal on the part of the defendant to honour the agreement, and the suit should have been filed within three years thereafter.

5. Mr. Ghosh has substantiated the above grounds by drawing the attention of the Court to the various averments in the plaint.

6. Mr. Ghosh has also relied on the following decisions:-

I. *Sri Mukund Bhavan Trust & Ors. vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another* reported in 2024 INSC 1025.

- II. ***Subhash Chander Kathuria vs. Umed Singh & Anr.***, reported in ***2006 AIR Delhi 194***.
- III. ***Fatehji and Company & Anr. vs. L.M. Nagpal & Ors.***, reported in ***2015 AIR SC 2301***.
- IV. ***Smt. Katta Sujatha Reddy & Anr. vs. Siddamsetty Infra Projects Pvt. Ltd. & Ors.***, reported in ***2023 (1) ICC 543***.
- V. ***Desh Raj & Ors. vs. Rohtash Singh***, reported in ***2023 AIR SC 163***.
- VI. ***Sumerchand Hukumchand & Ors. vs. Hukumchand Mathuradas & Ors.***, reported in ***AIR 1965 MP 177***.

7. Mr. Ghosh submits that the Hon'ble Apex Court has time and again held that, if on a meaningful reading of the plaint it appeared that the claim was hopelessly barred by limitation, no useful purpose would be served to relegate the party to a suit for a decision on the question of limitation as a specific issue. Time barred claims or plaints which do not disclose a cause of action, or suits which were not

maintainable in law should be nipped at the bud.

8. Mr. Rajat Das, learned advocate for the plaintiff/opposite party, submits that the plaint case clearly discloses the cause of action in paragraph 13. The specific case of the plaintiff was that the erstwhile defendant, by his conduct, had extended the time for performance when he started demanding money from the plaintiff after March 30, 2008. The plaint case specifically discloses such fact. While considering an application under Order 7 Rule 11 of the Code, the Court was required to accept the plaint case as the truth. The original defendant claimed money from the plaintiff on various occasions after March 30, 2008. The time for performance had been given a go by the parties and as such the first limb of Article 54 of the Limitation Act would not be applicable. The plaint disclosed that the parties were negotiating and the plaintiff was waiting for the defendant to perform his part of the contract as the defendant had prayed for some time to sort out

boundary issues with the adjacent land owners.

9. It had been specifically pleaded that the plaintiff did not want to create any pressure on the erstwhile defendant and the relationship between the parties was such that, there was no occasion to disbelieve the defendant.
10. The averments in paragraphs 6 to 10 of the plaint have been placed in great detail.
11. Heard the learned advocates for the respective parties. The learned Trial Judge recorded that the plaint stated that on November 2, 2007, the plaintiff paid Rs.1,50,000/- to the defendant, thereafter, Rs.5,50,000/- on November 6, 2007, Rs. 11,50,000/- on December 6, 2007. The plaint case was that at the request of the defendant further money was paid. The last cheque was paid on July 23, 2008. Thus, the Court found that there was an extension of the time for performance by conduct of the parties beyond the date fixed. The High Court had directed a sum of Rs.40 lakhs be deposited

in an appeal filed by the plaintiff, for implementation of the order of injunction.

12. Thus, according to the learned Trial Judge whether such order of the High Court would amount to, prima facie, satisfaction of the High Court with regard to maintainability of the suit, was also a question. Thirdly, the defendant had himself filed a suit in 2014, for cancellation of the agreement. Thus, according to the learned Trial Judge, limitation was a mixed question of law and fact and as such the trial was necessary to decide the issue as to whether the suit for specific performance was barred by limitation or not.

13. The revisional Court came to the finding that March 30, 2008 was no longer the date fixed for performance of the contract. The time for performance was extended from time to time by the parties. The question as to what would be the date of accrual of cause of action was a mixed question as the conduct of the parties would be relevant. The dispute as such, could not be resolved without a trial and

the suit should not be dismissed at its nascent stage.

14. Heard the learned advocates for the respective parties. It is well settled that an application for rejection of the plaint shall be considered by Court only on the averments in the plaint. If a meaningful reading of the plaint disclosed the cause of action and did not indicate, *ex facie*, that the suit was barred by law, the plaint should not be rejected.

15. Article 54 of the Limitation Act has two limbs. The first limb provides that the suit for specific performance of contract should be filed within three years from the date fixed for such performance. The second limb provides that when no such date is fixed the suit shall be filed within three years from notice of refusal to perform.

16. In the instant case, although the date was fixed for performance as March 30, 2008, it is an admitted position that the parties did not adhere to the said date. At the request of the defendant, payments were made by the plaintiff after the said date. Thus, both the parties, by their conduct had not

treated March 30, 2008 as the date for performance of the contract.

17. Under such circumstances, the first limb of the Article 54 in my, prima facie, view will not apply.

18. The issue as to whether the conduct of the parties would indicate that the parties proceeded to ignore the date of performance and extended the same by conduct, has to be proved in evidence. Time for performance of a contract can always be extended by conduct of parties. The plaintiff cannot be denied an opportunity to prove his case, by leading evidence in this regard.

19. Now comes the question of refusal and/or knowledge of refusal. The plaint discloses that, initially it was settled that the entire transaction would be completed within March 30, 2008. Thereafter, the date for execution of the deed of sale was shifted when the defendant had himself, on a plea to sort out some boundary dispute with adjacent land owners, assured the plaintiff that the transfer would be made within August, 2008. The plaint also discloses

that an amount of Rs.14 lakhs was paid sometime in July 2008. Paragraph 6 of the plaint discloses that the defendant had promised to hand over necessary documents upon receipt of the sum of Rs.14 lakhs, so that the plaintiff could prepare the draft of the proposed sale deed and proceed with the execution of the sale. The plaintiff averred that on several occasions the defendant was requested for those documents, but the defendant requested the plaintiff to be patient and allow him some more time, until the boundary dispute was over. Again, the defendant requested the plaintiff to pay a sum of Rs.6,50,000/-. As the defendant was an old man, the plaintiff showed reverence and decided not to disturb him, and waited patiently for the papers to be handed over. The plaint case discloses that the parties were talking to each other over the issue and there was some kind of negotiation by which the defendant had requested the plaintiff to wait for a while till the dispute with the adjacent land owners was resolved. The plaint also discloses that in July 2014, again the

defendant asked for some money. When the plaintiff refused, the defendant refused to hand over the papers. After a few days, a lawyer's notice dated July 25, 2014, was received, whereby it was informed that the defendant had claimed right, title and thereby, interest over the suit land and threatened to terminate the agreement.

20. The plea that the suit was barred by limitation, in my view, is a mixed question of law and fact, on the averments in the plaint which have been discussed hereinbefore. The matter should go to trial. The cause of action pleaded in paragraph 13 is unambiguous. The correctness or the truth of the statements can only be decided in trial. At the stage of disposal of the application for rejection of the plaint, all that is required for the court to ascertain is whether on a meaningful reading of the plaint and upon accepting each and every averment of the plaintiff to be true and correct, the plaint can be rejected at the first instance, upon holding that the claim was barred by law. This court is not satisfied with the submissions of Mr. Ghosh.

21. The decision in ***Fatehji and Company & Anr. vs. L.M. Nagpal & Ors.***, reported in ***2015 AIR SC 2301***, will not apply in the present case because the facts are distinguishable. In that case, the court came to a finding that the last extension for the performance had expired on February 1, 1977, and the suit for specific performance was filed on April 29, 1994.

22. The decision in ***Smt. Katta Sujatha Reddy & Anr. vs. Siddamsetty Infra Projects Pvt. Ltd. & Ors.***, reported in ***2023 (1) ICC 543***, was at the stage of hearing of an appeal from a judgment dated April 23, 2021, passed by the High Court for the State of Telengana, Hyderabad and not at the stage of hearing of an application under Order 7 Rule 11 of the Code. It was held that Article 54 of the Limitation Act would apply as the time for filing of the suit had expired in the end of June, 2000. The said judgment was rendered upon interpretation of the clauses of the agreement for sale. In the present case, such situation has not yet arisen.

23. The decision in ***Desh Raj & Ors. vs. Rohtash Singh***, reported in ***2023 AIR SC 163***, was also rendered in an appeal to the Supreme Court from the decision of the trial court and the lower appellate court. The entire issue, the decisions of the courts and the evidence were before the Hon'ble Apex Court.

24. Sri ***Mukund Bhavan Trust & Ors. vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle***, reported in ***2024 INSC 1025***, is a decision on Order 7 Rule 11 of the Code of Civil Procedure and it was held that the suit was not maintainable as the plaintiff could not produce any document of ownership and the resolution of the government had lost its force in view of the decree of the civil court and the subsequent compromise decrees. The decrees of the civil court had attained finality and neither the plaintiff nor his ancestors had challenged the same. The cause of action pleaded was found to be fictitious. The facts are distinguishable.

25. The decision in ***Sumerchand Hukumchand & Ors. vs. Hukumchand***

Mathuradas & Ors., reported in ***AIR 1965 MP 177***, is distinguishable. It was held that limitation for a suit of specific performance begins to run from the time fixed for performance. The question whether the time would be of essence would not be relevant. This issue was also not decided at the stage of a prayer for rejection of the plaint.

26. In ***Subhas Chander Kathuria vs. Umed Singh & Anr.***, reported in ***2006 AIR Delhi 194***, the issue decided was that payment of money by the defendant beyond a period of three years, would not extend the limitation and Section 18 of the Limitation Act with regard to acknowledgement of the debt, for computation of a fresh period of limitation, would not be applicable.

27. In view of the above discussions, this revisional application is dismissed. The suit shall proceed in accordance with law and the issue of limitation will be decided in the suit.

28. As the suit is at the stage of evidence, the learned trial judge is requested to dispose

of the suit expeditiously, preferably within a period of six months.

29. The revisional application is accordingly disposed of.

30. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)