



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 81 OF 2025

Mahesh s/o. Ramkrishna Patil (Deshpande)
Age 50 years, Occ. Agril.
R/o. Near Ram Mandir,
Samarth Nagar, Osmanabad,
Tq. and Dist. Osmanabad.

.. APPLICANT
(Ori. Defendant)

VERSUS

Sudhir S/o. Baburao Jagtap,
Age 59 years, Occ. Private Money Lender,
R/o. Farshi Galli, Osmanabad,
Tq. and Dist. Osmanabad.

.. RESPONDENTS
(Orig. Plaintiff)

Mr. Kishor J. Ghute Patil, Advocate for applicant.

CORAM :S.G. CHAPALGAONKAR, J.

DATE : 16th APRIL, 2025.

ORDER :-

1. The applicant/defendant in Special Civil Suit No. 93 of 2011 impugns the order dated 19.11.2024 passed by learned Joint Civil Judge (S.D.), Osmanabad, below Exh. 70 thereby rejecting the application under Order 7 Rule 11 of CPC seeking rejection of plaint.

2. Brief facts, giving rise to present application are as under :-

Respondent/original plaintiff instituted Special civil Suit No. 93 of 2011 seeking relief of specific performance of contract on the basis of agreement to sale date 29.7.2006. It is contention of plaintiff that

defendant was owner of Plot Nos. 2, 11 and 12 which are part of survey No. 190, situated at Osmanabad.

3. Since defendant was in the need of finances, he entered into agreement to sale dated 29.7.2006 with plaintiff and agreed to sale out suit plot for total consideration of Rs. 6,50,000/-. An earnest amount of Rs.4 Lakhs was paid at the time of agreement and balance of Rs. 2,50,000/- was to be paid at the time of execution of sale deed. Plaintiff agreed to execute the sale deed by 29.10.2007 after obtaining necessary N.A. permission and layout. The agreement was reduced into writing on bond paper of Rs. 100/- and executed in presence of two witnesses.

4. The defendant failed to act upon aforesaid agreement to sale. He protracted execution of sale deed by giving technical reasons, particularly, with NA and layout is still pending. Lastly, on 22.6.2011, plaintiff served a legal notice calling upon defendant to execute the sale deed, after accepting balance consideration amount. However, he declined to act upon the same.

5. The defendant filed his written statement and took up a plea that the agreement to sale dated 29.7.2006 is false and bogus document. On the basis of pleading of parties, issues were framed; evidence was recorded and finally, suit was decreed. The defendants filed appeal. The appellate court set aside the decree and remanded matter back for fresh determination on the ground that proper issues were not framed. The order of remand has been confirmed by this Court in A.O. No. 71 of 2016.

6. At this stage, defendant filed an application below Exh. 70 seeking rejection of plaint on the ground that suit is barred by limitation

in view of Article 54 of Limitation Act. The learned trial court, rejected said application, holding that the issue of limitation is triable in the facts and circumstances of the case and on the basis of pleadings in plaint, there is no scope to draw inference that suit is barred by limitation. Aggrieved thereby, present revision has been filed by defendant.

7, Mr. K.J Ghute Patil learned advocate appearing for applicant submits that suit for specific performance of contract is governed by provisions of Article 53 of the Limitation Act. The suit needs to be instituted within three years from the date fixed for specific performance of contract or if no such date is fixed, when plaintiff notice that performance is refused. According to him, as per the agreement to sale dated 29.7.2006, sale deed was to be executed within three months. Therefore, the suit filed in the year 2011 is barred by limitation. According to him, trial court misinterpreted pleadings in plaint and documents annexed thereto, and declined to entertain application for rejection of plaint. In support of his contentions, he relies upon the judgment of the Supreme Court of India in the case of ***Nikhila Mehta vs. Hitesh P. Singhvi dated 15.4.2025 (arising out of SLP (C) No. 13459 of 2024)***.

8. Having considered submissions advanced, it is not out of place to mention here that suit for specific performance of contract has been instituted by respondent in the year 2011. It was decreed. The First appellate Court remanded it back for trial. The present application for rejection of plaint is filed at a belated stage i.e. on 9.10.2024 below Exh.70, invoking jurisdiction of court under Order 7 Rule 11 of CPC. Although the plaint can be rejected at any stage of the proceeding, the basic purpose of provision is to curb the vexatious litigation and lessen

the burden of court by using drastic powers, enabling rejection of plaint. Considering the object of aforesaid provision, a belated application can not be considered in tune with the object of the provision. However, going by plain language of Order 7 Rule 11, entitlement of defendant to file application at any stage of proceeding can not be denied.

9. The parameters for exercise of powers under Order 7 Rule 11 of CPC have been summarized in catena of judgments delivered by Supreme Court of India. It is well settled that only contents of plaint and documents annexed thereto are relevant while deciding application under Order 7 Rule 11 of CPC. The defence set up in the written statement or in reply is not relevant. Perusal of the plaint in Special Civil Suit No. 93 of 2011 shows that defendant executed agreement to sale dated 29.7.2006 and agreed to execute sale deed by 29.10.2007, after obtaining necessary NA and layout. Apparently, the date for execution of sale deed was contingent subject to getting NA and layout. The date for execution of sale deed appears to be tentatively fixed, dependent upon compliance of aforesaid contingencies. On prima facie consideration of the contents of agreement to sale, it cannot be inferred that time was essence of contract or agreement was given quietus in case of non-execution of sale deed by a particular date. Going by pleading in plaint and contents of agreement to sale, it cannot be inferred that parties had agreed to execute sale deed on or before a specific date and non-execution of sale deed by the date would entail cancellation of agreement. In the circumstances, issue in that regard requires to be framed and after recording evidence, same needs to be answered.

10. Although Mr. Ghute Patil learned advocate for applicant has relied upon judgment of the Supreme Court of India in case of *Nikhila*

Mehta (supra), in which the suit was instituted seeking declaration against will and codicil to be null and void. In plaint itself, it was pleaded that cause of action arose first on 4.2.2014 when will was registered and secondly, on 20.9.2014 when Codicil was registered and finally, on 21.10.2014 when the father died, whereas, suit has been filed on 21.11.2017 which was held to be ex-facie barred by limitation. In that case, plaintiff has specifically pleaded about the knowledge of all the relevant facts regarding execution of Will and Codicil and filed suit beyond period of three years of last cause of action shown in the plaint. In this background, the application for rejection of plaint has been entertained.

11. In the present case, plaintiff has specifically pleaded that defendant agreed to execute sale deed after obtaining NA and layout, however, giving technical reasons protracted the execution of sale deed, lastly, notice for specific performance was served in the year 2011 before institution of suit. Therefore, from the contents of plaint or merely on the basis of date mentioned for execution of sale deed in the agreement to sale, inference cannot be drawn that it was a date fixed for performance of contract or plaintiff was noticed about refusal of performance. Prima facie, aforesaid factual aspects need to be established during the course of trial, after leading necessary evidence. Therefore, the trial court is justified in refusing to entertain the application for rejection of plaint on the ground of limitation. In the result, civil revision application sans merit, hence, dismissed.

[S.G. CHAPALGAONKAR, J]

grt/-