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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 384 OF 2024.

Lotus Properties Private Limited, Mumbai

...Appellant.

Versus

M/s. Lakhani Book Depot, Mumbai And Ors.

...Respondents.

Mr. Nishant Chothani a/w Ms. Niyati Shah i/by MLS Vani & Associates for the Appellant.

Ms. Sakshi Agrawal i/by Mr. Bipin Joshi for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : March 4, 2025.

P. C. :

1. The present First Appeal has been filed at the instance of Original Plaintiff challenging an order dated 6th December, 2023 passed by the City Civil Court on praecipe based on an objection by the Board Department that the Suit is not within limitation. The Trial Court by the impugned order examined the averments in the plaint and held that the suit is barred by limitation and dismissed the suit by upholding the office objection.

2. Learned Counsel appearing for the Appellant would submit that the statutory provisions read with Civil Manual do not provide for any such course to be adopted by the Trial Court. He submits that in event an issue of limitation is required to be considered the same is to be framed under Order XIV and the suit could not have been dismissed

upon an objection raised by the Board Department.

3. Learned Counsel appearing for the Respondent would submit that the averments in the plaint makes it clear that an agreement of 1972 has been challenged in the year 2023 and therefore the suit is barred by limitation.

4. The following point would arise for determination.

(i) Whether the Trial Court was justified in dismissing the suit as barred by limitation based on office objection received from the board department and without framing an appropriate issue in that regard.

As to Point No. (i)

5. The facts are not in dispute. The suit came to be filed by the Original Plaintiff seeking declaration in respect of an agreement dated 20th April, 1972. It was contended that the Plaintiff become aware of the same in or around the year 2023 and therefore the suit was within limitation. The issue of limitation even if raised by the board department does not affect inherent jurisdiction of the Court to receive and entertain the suit. The decision of Hon'ble Apex Court in ***Nusli Neville Wadia Vs. Ivory Properties Ltd'*** has taken the issue of limitation out of purview of the then existing 9-A which permitted framing of preliminary issue. The issue of limitation is required to be

¹ AIR 2019 SUPREME COURT 5125

considered by the Court after framing an appropriate issue under Order XIV of CPC and even as preliminary issue if pure question of law is involved.

6. The Trial Court has adopted a unique course of dismissing the suit on the ground of limitation by way of *praecipe* based on an objection received from board department. The Trial Court by cryptic order has examined averments in the plaint and has rendered a judgment that the suit is hopelessly barred by limitation and not maintainable and has thereby upheld office objection. Such course is not demonstrated to be sustainable in law.

7. In light of the above, the Trial Court could not have dismissed the suit on *praecipe* being barred by limitation without receiving it for consideration and framing an appropriate issue in that regard. Point No. (i) is accordingly answered in favour of the Appellant.

8. Resultantly, the following order is passed.

::ORDER::

a) First Appeal stands allowed.

b) The impugned Judgment dated 6th December, 2023 is hereby quashed and set aside. The suit is restored to the file of the Civil Court to be Registered in accordance with the prescribed procedure.

9. In view of the disposal of First Appeal, nothing survives for consideration in the pending Civil/Interim Applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]