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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO. 30246 OF 2024
WITH
INTERIM APPLICATION NO. 14834 OF 2024
IN
FIRST APPEAL (ST.) NO. 30246 OF 2024

M/s. Manoj Enterprises, through its Partner

Manoj Lachhmandas Jagwani

... Appellant/Applicant

Versus

Naresh Manohar Vazirani

... Respondent

Mr. Kaustubh Thipsay for the appellant/applicant.

Mr. Surel Shah, Senior Advocate a/w. Saakshat Relekar i/b. Vinayak Patil &
Ranjit Ade for the respondent.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 20 MARCH 2025

P.C.:

1. By consent of the parties, we have taken up the First Appeal for final disposal.
2. The First Appeal is directed against the order dated 4 March, 2024 passed by the learned Civil Judge, Senior Division, Kalyan below Exhibit 1 in Special Civil Suit No. 303 of 2023, whereby the learned trial judge suo moto exercising jurisdiction under Order VII Rule 11(d) of the Code of Civil Procedure has rejected the appellant's plaint. The appellant filed the suit in question praying for specific performance of the agreement dated 4 January, 2014 as entered with the defendant.
3. At the outset, we may observe that the respondent/defendant was yet to enter appearance, at the stage, when the impugned order was passed. The

respondent is represented in the present proceedings by Mr. Surel Shah, learned senior counsel.

4. There are several contentions as urged by Mr. Kaustubh Thipsay, learned counsel for the appellant in assailing the impugned order, which according to him has non-suited the appellant peculiarly on the ground of limitation. It is his submission that the issue on limitation in the facts of the case was certainly a mixed question of fact and law, which required evidence to be led and more particularly on the negotiations which had taken place between the parties. He contends that the provisions of Article 54 of the Limitation Act were relevant and required consideration on any such adjudication.

5. We note the limited and only observation as contained in the impugned order on the basis of which the plaint is rejected.

6. On the aforesaid backdrop, we have heard learned counsel for the parties for sometime. Mr. Shah, learned senior counsel for the respondent/defendant has taken a fair stand. On instructions, he would submit that the respondent/defendant would consent for setting aside the impugned order and the proceedings of suit can be restored to the file of the learned trial Judge, however, with liberty to the respondent/defendant to move an application under Order VII Rule 11, if so advised. In the event, any application is filed by the respondent/defendant under Order VII Rule 11, the same be taken up and decided expeditiously.

7. In view of the fair stand as taken on behalf of the respondent/defendant as also considering the facts and circumstances of the case and the nature of the

impugned order, we are of the opinion that it would be in the interest of justice that the proceedings of Special Civil Suit No. 303 of 2023 be restored to the file of learned trial Judge for further adjudication. We, accordingly, dispose of this appeal in terms of the following order:

ORDER

(i) The impugned order dated 4 March, 2024 passed by the learned Civil Judge, Senior Division, Kalyan below Exhibit 1 in Special Civil Suit No. 303 of 2023 is quashed and set aside;

(ii) The proceedings of Special Civil Suit No. 303 of 2023 are restored to the file of learned Civil Judge Senior Division, Kalyan for further adjudication;

(iii) The respondent/defendant is at liberty to move an application under Order VII Rule 11 if so advised. If such application is filed, all contentions of the parties are expressly kept open.

8. Needless to observe that in passing the aforesaid order, we have not delved on the merits of the rival contentions. The parties are free to urge all contentions in the pending proceedings.

9. The appeal stands disposed of in the aforesaid terms. No costs.

10. Interim Application would also not survive. It stands disposed of accordingly.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]