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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 62 OF 2025
WITH
INTERIM APPLICATION NO. 1032 OF 2025
IN
SECOND APPEAL NO. 62 OF 2025**

1. Aniket Mahendra Mandhare
Age: 26 years, Occu: Business
R/at: 145, Kothrud Pune – 411038

2. Amar Eknath Pathare
Age: 35 years, Occ: Business
R/at: Near Talathi Office, Rahatani,
Pune : 411038

...Appellants/Applicants

Versus

1. Sukhdev Dattatray Waje
Age: 48 years, Occ: Agriculturist

2. Jagan @ Jagannath Dattatray Waje
Age: 46 years, Occ: Agriculturist,
Both R/at: Pusane, Taluka- Maval
District – Pune 410 401

.....Respondents

Mr Jaydeep Deo a/w. Mr. Onkar Gawade for the Appellants/Applicants
Mr. Drupad Patil a/w. Mr. Ajay Jaybhay for the Respondents.

CORAM : M. M. SATHAYE, J.

DATED : 9th JULY 2025.

JUDGEMENT:

1. Heard learned Counsel for the parties.

2. This Second Appeal is filed challenging the Judgement and Decree dated 09/10/2024 passed by the District Judge – 1, Vadgaon, Maval, Pune in Regular Civil Appeal No. 14 of 2024 confirming order dated 10/01/2024 passed below Exh. 14 by the Civil Judge, Senior Division, Vadgaon, Maval, Pune in Special Civil Suit No. 1162 of 2022 rejecting the plaint under Order VII Rule 11 (a), (b), (c) & (d) of the Code of Civil Procedure, 1908 (for short “the CPC”).

3. By an order dated 28/01/2025, following substantial questions of law were framed and notice for final disposal was issued :

(i) Whether both the Courts erred in not considering the cause of action pleaded by the plaintiff which was common for the prayer of specific performance and alternative relief of refund of earnest money and compensation?

(II) Whether both the Courts erred in rejecting the Plaint on the point of limitation by ignoring the cause of action and the alternative prayers made by the Plaintiff?

(III) Whether in view of the legal principles settled by the Hon’ble Apex Court in the case of **Sejal Glass Limited Vs. Navilan Merchants Private Limited [(2018) 11 Supreme Court Cases 780]**, the reasons recorded by both the Courts to reject the Plaint on the ground of limitation would be sustainable in law?

(IV) Whether the first Appellate Court ought to have considered remanding the suit to the trial Court for deciding the suit on merits, in view of the specific cause of action and the alternative prayers made by the Plaintiff?

4. The Respondents have appeared. The Appeal is admitted on above

substantial questions of law. Learned counsel for the parties are heard finally by consent. Taken up for final hearing.

5. Few facts necessary for disposal of this Appeal are as under.

5.1. The Appellants filed the said Suit for specific performance of the suit agreement dated 12/06/2015 which is a registered document. Apart from prayer of specific performance, the Appellants also claimed possession of the suit property and damages as per Clause 15 of the Plaint. The prayer in the alternative is for refund of Rs.35,00,000/- with interest, damages of Rs.1,50,00,000/- and recovery of expenses for construction of compound, as mentioned in Clause 16 of the Plaint. The cause of action pleaded is suit notice dated 29/12/2021 demanding execution of sale deed alongwith refund of amount paid under agreement and compensation (Through in the Plaint, date of notice is mentioned as 29/12/2021, the document produced is notice dated 18/12/2021; month and year of notice is same). The notice reply dated 18/01/2022 is also stated to be the cause of action.

5.2 In the body of the Plaint from paragraph nos. 9 to 11, it is pleaded that under notice dated 02/08/2016 and public notice dated 03/08/2016 the Respondents had sought to cancel the suit agreement

and the Power of Attorney (POA), after which the Appellants met Respondents and requested for completing the transaction. It is pleaded that at the relevant time, the Respondents informed the Appellants that partition was to take place in the family and therefore after the partition is complete, the sale deed will be executed. It is pleaded that the Respondents requested to wait for that reason. It is further pleaded that after the Appellants were convinced that the partition is not taking place in the family of the Respondents, suit notice was sent, which was replied.

5.3 It is also pleaded that the Respondents were not refunding the amount of Rs.35,00,000/- paid by cheques under the suit agreement and therefore prayers are made for specific performance, possession and damages or in the alternative for refund of amount paid with interest, compensation and other recovery. The Plaintiffs produced copies of suit agreement, POA, Memorandum of Understanding (MOU) and notices issued by parties and notice replies, with the plaint.

5.4 Trial Court rejected the plaint entirely. The Appellate Court has confirmed the said order/decreed.

6. Mr. Deo, the learned Counsel for the Appellants submitted that even if one of the reliefs claimed by the Appellants survives, the Plaint cannot be rejected partially under Order VII Rule 11 of the CPC. He submitted that partial rejection of Plaint is not permitted under the said Rule. He submitted that assuming without admitting that even if the Court comes to the conclusion that the prayer for specific performance is time-barred, still other prayers such as damages as per Clause 15 of the Plaint and the entire alternative prayer of refund of amount paid by cheques with interest, compensation and other recovery claimed, remains to be considered and therefore, the Plaint could not have been rejected in its entirety. He relied upon the Judgment of **Central Bank of India and Another vs. Prabha Jain And Others [(2025) 4 SCC 38]** in support of his contentions.

7. *Per contra*, Mr. Patil, the learned Counsel for the Respondents submitted that perusal of the Plaint clearly indicates that in August 2016 itself under the first notice the Respondents/Defendants had cancelled the suit transaction as well as POA, or at least the Appellants/Plaintiffs understood the said notice as cancellation of suit agreement and the POA and therefore the Suit filed in the year 2022 is *ex-facie* barred by limitation. He submitted that in the notice dated 02/08/2016 itself it was informed that the Respondents were ready to refund Rs.13,00,000/- and the cause of

action for both specific performance and refund, had arisen when the Respondents refused performance and indicated that they were ready to refund. He submitted that therefore even for the alternative prayer of refund of amount, the cause of action and limitation started in August 2016. Therefore, it is submitted that suit for specific performance and refund in the year 2022 is barred by limitation as per Article 54 of the Limitation Act. He submitted that if the Court finds from the pleadings and documents that the prayer for specific performance is time-barred then alternative prayer for refund of compensation also has to be held as barred by limitation. He sought to distinguish the Judgment of **Central Bank of India and Another (supra)** of the Hon'ble Supreme Court on this ground. He submitted that the said Judgment might apply when there are individual prayers under consideration, but since the alternative prayer of refund and compensation is under consideration, the Judgment of **Central Bank of India and Another (supra)** will not help the Appellants.

8. He relied on the Judgment of Hon'ble Supreme Court in **S.L.P (C) No. 13459 of 2024 dated 15/04/2025 in Nikhila Divyang Mehta & Anr. Vs. Hitesh P. Sanghvi & Ors.** in support of his submissions that since primary relief claimed is time-barred then all the subsequent prayers would also be time-barred. He further relied upon the Judgment of **Dahiben Vs. Arvindbhai**

Kalyanji Bhanusali (Gajra) dead through Legal Representatives and Others [(2020) 7 SCC 366] to contend that the present suit must not be permitted to continue as it amounts to unnecessary protraction of proceedings and it is necessary to put an end to sham litigation such as present suit in order to save judicial time. He has also relied upon the Judgments of **Chetana Shankar Manapure and Another Vs. Bandu s/o Tanaji Barapatre [2020 (4) Mh.L.J. 481]** and **Church of Christ Charitable Trust and Educational Charitable Society Represented by its Chairman Vs. Ponniamman Educational Trust Represented by its Chairperson/Managing Trustee [(2012) 8 SCC 706]** in support of argument that rejection of entire plaint in respect of 'one of the defendants' viz. Defendant No. 2 is permissible.

9. I have carefully considered the submissions in the light of substantial questions of law framed above and have gone through the records with the assistance of the learned Counsel for the parties.

10. The moot question arising in the present case is whether the pleadings in this case and the documents produced alongwith the Plaint, as they stand, indicate clearly that the claim as made by the Appellants is barred by limitation and there is no cause of action disclosed.

11. It is material to note that the Appellants have pleaded that after the

notice of August 2016 was received, the Appellants had contacted the Respondents and Appellants were requested to wait because the partition was to happen in the family of the Respondents. This has a material bearing on the case in hand, in as much as, when the Appellants sent notice dated 18/12/2021 to the Respondents, the Respondent No. 1 has replied on 18/01/2022 clearly stating that he is ready to refund the amount of Rs.13,00,000/- received under suit agreement and for the said purpose Respondent No. 1 called upon Appellants to cancel the registered agreement to sell and POA. This indicates that in January 2022, one of the Defendants had acknowledged that he is ready to refund the amount and was treating the registered agreement and POA as subsisting. This has direct bearing on the aspect of refusal of performance as contemplated under Article 54 of the Limitation Act.

12. An attempt was made by the learned Counsel for the Respondents to contend that this notice reply is not issued by Defendant No. 2. However, in the facts and circumstances of the case when the Respondents have jointly promised to sell the suit property to the Appellants under a registered document, mere fact that only one of the Defendants have acknowledged readiness to refund will not be fatal enough to reject the Plaint, without giving an opportunity to Appellants to lead evidence and prove their case.

13. Notice dated 02/08/2016 is heavily relied on by the learned Counsel for the Respondents to contend that the suit is barred by limitation and cause of action started on that day. Perusal of the said notice indicates that though it is stated that the Respondents have decided to cancel the transaction and refund Rs.13,00,000/-, ultimately in the concluding paragraph of the notice, the Respondents called upon the Appellants to cancel the agreement to sell. This itself indicates that the notice dated 02/08/2016 cannot be treated as conclusive indication of refusal of performance. It is difficult to digest that a party refusing the performance of the contract would call upon the rival party to cancel the contract for the purpose of refund. The cause of action as stated in the Plaint, based on the suit notice of December 2021 coupled with the pleadings about why Appellants waited till suit notice, cannot be said to be illusory or non-existing. At the cost of repetition, it is noted that in the notice reply of December 2021, one of the joint promisers viz. Respondent No. 1 has shown willingness to refund Rs.13,00,000/- and again called upon the Appellants to cancel the registered Agreement to Sale and POA.

14. The Hon'ble Supreme Court in a recent Judgement of **Central Bank of India and Another (supra)** after considering the Judgment of **Sejal Glass Limited** (referred in substantial question of law), has held in unequivocal

terms as follows:

“23. Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaint must survive because there cannot be a partial rejection of the plaint under Order 7 Rule 11 CPC. Hence, even if one relief survives, the plaint cannot be rejected under Order 7 Rule 11 CPC. In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the SARFAESI Act and are within the civil court's jurisdiction. Hence, the plaint cannot be rejected under Order 7 Rule 11 CPC.

24. If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order 7 Rule 11 application. This is because if the civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B.”

[Emphasis Supplied]

15. As already indicated above, apart from specific performance, there are various other prayers made including prayer of possession and damages and prayer for refund with interest in the alternative. Nature of pleadings narrated above clearly indicates that all the prayers cannot be said to be barred by limitation. Admittedly the amount of Rs.35,00,000/- paid by cheques under registered agreement has not been refunded so far. In view of various stands taken in the notice reply about refund, the claim of refund alongwith interest as well as compensation cannot be said to be barred by limitation without the said issue being decided with opportunity to parties to lead evidence. There is no substance in the argument of the Respondents

that if suit for specific performance is barred by limitation then the alternative prayer of refund with interest and compensation is also barred by limitation. In my considered view, these are mixed questions of facts and law. There can not be a straight jacket formula applicable without evidence on case to case basis. The Plaintiffs cannot be non-suited at the stage of Order VII Rule 11 of the CPC in peculiar circumstances narrated above. The Judgment of the Hon'ble Supreme Court in the case of **Central Bank of India and Another (supra)** squarely applies to the facts of this case. Therefore neither entire nor partial rejection of plaint is permissible in the facts of this case.

16. With the nature of pleadings and the documents relied in this case, I do not find that this litigation can be called a sham litigation and therefore the Plaint cannot be rejected by branding it 'unnecessary protraction of litigation'. Therefore, the Judgment of the **Dahiben (supra)** relied upon by the Respondents for that purpose, will not advance the case of the Respondents.

17. In case of **Nikhila Divyang Mehta & Anr. (supra)** relied upon by the Respondents, the Hon'ble Supreme Court found that prayers made in the suit involved therein was primarily declaration about will and remaining prayers were about actions pursuant of the said will. In that context, the

Hon'ble Supreme Court has held that other reliefs which are dependent upon the first relief cannot be granted until and unless the Plaintiff succeeds in the first relief. The facts of the present case are completely different and distinguishable. In the present case, there is a prayer for refund of money and compensation alongwith damages, which is based on registered suit agreement, apart from the claim for specific performance. Assuming that the Appellants fail in their prayer for specific performance after evidence, on the basis of notice reply and other evidence that may be led, it cannot be said that their claim for refund of money, damages and compensation are already time-barred. This makes the situation amounting to partial rejection, which is not permitted, as indicated above.

18. Learned counsel for the Respondents have relied upon the Judgment of this Court in **Chetana S. Manapure (supra)**, which in turn, relying upon **Church of Christ (supra)**, has permitted partial rejection of plaint against some of the Defendants. It is submitted that in the present case also, rejection of plaint vis-a-vis Respondent No. 2 (Defendant who has not replied to notice dated 18.12.2021) is necessary.

19. Careful reading of the Judgment in **Chetana S. Manapure (supra)** rendered by learned single Judge of this Court would clearly indicate that despite reliance placed upon the judgments of Hon'ble Supreme Court in

Sejal Glass Limited (supra) and Madhav Prasad Aggarwal and Another Vs. Axis Bank Limited and Anr. [(2019) 7 SCC 158], judgment of **Church of Christ (supra)** was followed on the peculiar reasoning and in the facts of that case, which is clear from paragraphs 16 & 17 thereof, which read as under :

“16. This Court finds that the judgment of the Hon'ble Supreme Court in the case of Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniammam Educational Trust (supra) can be followed as per of the position of law indicating that it is a binding precedent on this Court, in view of absence of any reference to or explanation of the said judgment in the subsequent judgments of Benches of co-equal strength of Hon'ble Supreme Court in the cases of Sejal Glass Limited vs. Navilan Merchants (P) Ltd. (supra) and Madhav Prasad Aggarwal vs. Axis Bank Ltd. (supra). Additionally, in the facts of the present case, the judgment of the Hon'ble Supreme Court in the case of Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniammam Educational Trust (supra) is directly applicable.

17. Therefore, the facts of the present case need to be appreciated to examine whether the Court below was justified in rejecting the applications for rejection of plaint filed by the revision applicants at Exhibits-83 and 101. The only reason given by the Court below for rejecting the said applications is that the plaint could not be rejected in piecemeal and the rejection of the plaint must be as a whole and it could not be split for rejection.”

[Emphasis Supplied]

20. Therefore it is apparent that the Judgment of **Chetana S. Manapure (supra)** has been rendered by learned Single Judge of this Court, in the peculiar facts of that case, where revision applicants (some of the defendants) were not signatories to the agreement in question and

agreement was without their consent, in a suit for specific performance, and therefore partial rejection of plaint was ordered, vis-a-vis those Defendants.

21. The facts of the present case are completely different and distinguishable. In the present case, both the Respondents are signatories to the registered agreement to sell. It is nobody's case that the agreement was without their consent. In that view of the matter, neither the Judgment of **Chetana S. Manapure (supra)** nor **Church of Christ (supra)** will help the Respondents in the facts of this case as already explained above.

22. In view of the aforesaid facts and circumstances, the impugned order of rejection of the Plaint and its confirmation in appeal, cannot be sustained for objections under Order VII, Rule 11(a) and (d).

23. About rejection of plaint on the ground of improper valuation and insufficient stamping / court fees, though the Trial Court rejected the plaint on these grounds also, under Order VII Rule 11 (b) and (c), the Appeal Court has only discussed this aspect in paragraph 14 of the impugned Judgment, but has not come to a positive conclusion that the plaint is properly valued or stamped or proper court fees are paid or not. In the operative part, the impugned order simply dismissed the appeal. In my view, it amounts to confirmation of the findings of the Trial Court about rejection

under Order VII, Rule 11(b) and (c), without a specific finding. Also opportunity is not given to Plaintiffs to cure the defect, if the plaint is to be rejected on these grounds. Therefore remand to that extent is necessary.

24. The Second Appeal is accordingly partly allowed as under :

(A) The impugned Judgment and Decree dated 09/10/2024 and order dated 10/01/2024 are quashed and set aside and Respondents' application Ex. 14 under Order VII, Rule 11(a) and (d) is rejected.

(B) Respondents' application Ex. 14 under Order VII Rule 11 (b) and (c) is restored and remanded to the Trial Court for fresh consideration, to be decided in accordance with law. Rival contentions in that regard are kept open.

(C) After the decision on application Exh. 14 under Order VII, Rule 11(b) and (c), if the suit continues, the same shall be decided on its own merits and in accordance with law. All contentions of the parties including that of limitation and cause of action are kept open to be decided on appreciation of evidence.

(D) Pending Civil Application is also disposed of.

(E) Considering that the suit is being remanded for re-consideration, refund of court fees be issue to the Appellants as per applicable Rules.

25. At this stage, learned Advocate for the Respondents makes a request that operation of this order be stayed in as much as, it rejects the application under Order VII Rule 11(a) and (d). Learned Counsel for the Appellants opposes this request. In fairness, the operation of the present order to the above extent, is stayed for a period of four weeks.

26. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)