

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 218 OF 2025
WITH
CIVIL REVISION APPLICATION NO. 219 OF 2025

Jayant Maniklal Lunawat ... Applicant

V/s.

Shri Manoj Bajirao Balwadkar and ... Respondents
Ors.

Mr. Nitin P. Deshpande, for the applicant in both applications.

CORAM : N.J. JAMADAR, J.

DATE : 17TH APRIL 2025.

PC:

1. These revisions are directed against identical orders in the counter-claims in Special Civil Suit No. 1551 of 2010 and Special Civil Suit No. 1548 of 2010 whereby the applications preferred by the applicant/defendant to the counter-claims for the rejection of the counter-claims on the ground that the counter-claims disclosed no cause of action and are otherwise barred by law of limitation, came to be rejected.

2. The respondents-landlords had executed development agreements in favour of the plaintiff in respect of the suit properties. Apart from monetary consideration the parties had agreed that the applicant would hand over a plot admeasuring 1000 sq. mtrs to the

respondents – owners. In addition to the development agreement, the respondents had executed Confirmation Deeds and Power of Attorney in favour of the applicant.

3. The applicant claimed, pursuant to the development agreements, the applicant amalgamated the plots and handed over the possession of the plot which was to be delivered to the respondents, in addition to agreed monetary consideration. Yet, the respondents issued a notice for termination of the development agreements. In fact, the respondents had carried out un-authorised and illegal construction, and, therefore, the applicant could not develop the land in terms of the development agreement. Thus, in the month of September 2009, the respondents verbally surrendered their right, title and interest in the suit plot and agreed to sell, transfer and convey the suit property in favour of the applicant. Thus, the applicant had instituted suite for a declaration that the verbal development agreements were legal, valid and binding on the respondents and notices of termination issued by the respondents were illegal, ultra virus and not binding on the applicant and the consequential reliefs, including a decree for specific performance of the development agreement as well as verbal agreements.

4. In the said suits, the respondents filed counter-claims contending that the applicant by misusing the Power of Attorney had got sanctioned the building plan in respect of the land which comprised of suit plots and thus no further building permission to develop the said plots could be obtained. The respondents sought a

declaration that applicant committed a breach of the development agreement and, thus, the respondents had legally and validly terminated the development agreement and that the applicant be directed to hand over the plots to the respondents, amend the layout and pay the compensation for the breach of the agreements.

5. The applicant eventually withdrew the suits. However, the counter-claims continued. The applicant filed application for rejection of the counter-claims asserting that, there was no cause of action and the counter-claims were barred by law of limitation.

6. The learned Civil Judge found that the counter-claims did disclose the cause of action and the issue of limitation was a mixed question of law and facts and, thus, warranted adjudication at the trial, and rejected the application.

7. Mr. Deshpande, learned counsel for the applicant submitted that, since the respondents had executed the deeds of confirmation and acknowledged the carving out and delivery of the plots, the respondents could not have terminated the development agreement. Thus, there was no cause of action for respondents to file the counter-claim. At any rate, since the development agreements and deeds of confirmation were executed in the year 2001 and 2003, the counter-claim seeking declaration that the development agreements and the Power of Attorney were lawfully terminated was ex-facie barred by law of limitation.

8. I find it difficult to agree with the submissions of Mr.

Deshpande. The averments in Para 30(g) of the counter-claim contain the gist of the claim of the respondents.

9. It is pertinent to note that the respondents have not denied the execution of any of the instruments, namely, the development agreements, the Power of Attorney and the deeds of confirmation. What the respondents contend is that, in the month of 2010, when respondents decided to develop the plots which were carved out by the applicant, it transpired that the applicant had got sanctioned the building plans even in respect of the said plots by misusing the Power of Attorney; leaving no scope for further development of the said plots. Having realised the alleged breach of contract, the respondents claimed to have issued notice to terminate the development agreements.

10. In contrast, it is interesting to note, in addition to the development agreements and the instruments executed in pursuance thereto, the applicant had approached the Court with a case that there were a verbal agreements between the parties in the year 2009 and sought specific performance of the said verbal agreements along with the development agreements. The applicant had also sought a declaration that the termination notices were not legal and valid.

11. In this backdrop, it would be audacious to urge that there was no cause of action to file counter-claims. Evidently, the disputes had arisen between the parties in the year 2009-2010. Two competing claims were sought to be asserted. Therefore, the learned Civil Judge was fully justified in recording a finding that the counter-claims did

disclose a cause of action.

12. On the aspect of limitation as well, the events which transpired in the year 2009-2010, especially, the termination notices upon the alleged realisation of the breach of the contract, clearly indicate that the cause of action to seek reliefs qua the development agreements arose contemporaneous to the said disputes between the parties.

13. Thus, the learned Civil Judge was also well within his rights in declining to reject the plaint on the premise that the issue of limitation was a mixed question of law and facts.

14. Resultantly, this Court does not find any infirmity in the impugned orders.

15. The applications stand rejected.

(N.J. JAMADAR, J)