



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.505 OF 2025**

Jyotsna Digambar Patil and Ors. ... Applicants
versus
Shashikant Tulshiram Khamkar and Ors. ... Respondents

Mr. Ashok B. Tajane (through VC) with Ms. Rekha Musale, Ms. Y.A.Tajane, for Applicants.

**CORAM: N.J.JAMADAR, J.
DATE : 17 OCTOBER 2025**

P.C.

1. Heard Mr. Tajane, learned Counsel for the Applicants.
2. This Revision Application is directed against an order dated 10 Sept 2025 passed by the learned Civil Judge, Wadgaon Maval, Pune, whereby the application preferred by Defendant Nos.6 to 15 for rejection of the plaint under the provisions of Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908, came to be rejected.
3. Respondent Nos.1 to 3 have instituted a suit for specific performance of the contract to sell the suit property contained in the Memorandum of Understanding (MOU) dated 15 October 2016 and the consequential relief of injunction.
4. The Plaintiffs claimed that in accordance with the MOU, the Plaintiffs were put in possession of the suit property. The Defendants sought time to execute the sale deed, on one or the other pretext. Eventually, on 19 March

2024, the Defendants conveyed refusal to perform their part of the contract as a complaint was lodged by Defendant No.2 with Lonavala Rural Police Station. The Plaintiffs have been and are willing to perform their part of the contract. Hence, the suit.

5. Defendant Nos.6 to 15 filed an application for rejection of the plaint asserting, *inter alia*, that it was bereft of any cause of action and the suit was barred by law of limitation, as the MOU was executed on 15 October 2015 and the suit came to be instituted in the month of May 2024. By the impugned order, the learned Civil Judge rejected the application observing, *inter alia*, that no specific date for performance of the contract was fixed and, thus, the suit would be governed by Second Part of Article 54 of the Limitation Act, 1963, and, the Defendants failed to demonstrate that, *prima facie*, there was refusal on the part of the Defendants three years prior to the institution of the suit.

6. Mr. Tajane, learned Counsel for the Applicants, would urge that the learned Civil Judge did not properly appreciate the bar of limitation. MOU was executed on 15 October 2015. An artificial date of refusal of performance was asserted by the Plaintiffs in the plaint. Learned Civil Judge ought to have read the plaint in a meaningful manner. Taking the Court through the averments in the plaint, Mr. Tajane made an endeavour to draw home the point that the suit is *ex-facie* barred by limitation.

7. As the suit is for specific performance of the contract to sell the immovable property contained in the MOU, the terms of the said MOU become significant for the determination of the controversy. Article 54 of the Limitation Act, provides three years limitation for a suit for specific performance of the contract. The time begins to run from the date fixed for the performance or if no such date is fixed, when the Plaintiff has notice that the performance is refused.

8. A bare perusal of the MOU indicates that the parties had agreed that the sale deed would be executed within one month after the demarcation of the property. Clauses 8 and 9 of the MOU are material, and, hence, extracted below :

“8.The vendors has agreed to execute the Sale Deed within one month after demarcation of property as mentioned above. The purchaser shall obtain the permissions if required from the Government, Semi Govt. offices for proper registration of sale deed before that period. However, said period shall be extended mutually if any technical problem occurs.

9. It is agreed in between both the parties herewith that, out of the total area purchased by the vendors, the area admeasuring 00H. 92 R which is subject matter of the litigation pending before High Court under Second Appeal No.600 of 2001. The vendor herein agreed to settle the said dispute before execution of the Sale Deed. If the Vendors herein are failed or unable to settle the said dispute and make the property free from encumbrance, then it is agreed between the

parties hereto that, the sale deed can be executed in respect of the remaining area of property i.e. admeasuring 02 H 28R out of Gat No.7”

9. It would be contextually relevant to note that, under clause 3(vi) of the MOU, the vendor had agreed to apply and pay the charges for the measurement / demarcation of the suit property to the concerned government department and get measured / demarcated the suit property before the execution of the sale deed.

10. A cumulative reading of the aforesaid clauses would indicate that there were reciprocal obligations on the Defendants. Time would begin to run after the vendors got the subject land measured and demarcated. Under Clause 9, the vendors had agreed to settle the dispute, which was subjudice in SA No.600 of 2001 before the execution of the Sale Deed. In a sense, the obligation to get the land measured / demarcated and settle the dispute before the execution of the sale deed, was on the Defendants.

11. In the aforesaid view of the matter, learned Civil Judge was perfectly justified in holding that the suit would be governed by the Second Part of Article 54 of the Limitation Act, and the time would begin to run from the date of the refusal of the performance. The controversy, thus, enter the arena of facts. That renders the question of limitation a mixed question of law and facts. Thus, the impugned order does not suffer from any infirmity which

would warrant correction in exercise of the revisional jurisdiction.

12. The Civil Revision Application stands dismissed.

(N.J.JAMADAR, J.)