

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

CIVIL REVISION APPLICATION NO. 541 OF 2025

M/s. Amrut Builders through partners
Mr. Dipak Ramesh Mehta and anr.

...Applicants

Versus

Mr. Bipin Narayan Gade and ors.

...Respondents

Mr. Satya Shettiger, for the Applicants.

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**CORAM: N. J. JAMADAR, J.
DATED: 25th NOVEMBER, 2025**

Order:-

1. This revision application is directed against an order dated 19th September, 2025, passed by the learned Civil Judge, Kalyan, whereby an application preferred by the applicants – defendants for the rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure Code, 1908 (“the Code”) came to be rejected.

2. The respondents – plaintiffs claimed to be the owners of the suit land situated at Gauri Pada, Taluka Kalyan, District Thane. As the suit lands were in the possession of the tenants, and allegedly false and bogus Sale Deeds were executed in respect of the suit lands; for the cancellation of which the plaintiffs instituted a suit, and the plaintiffs had no wherewithal

to prosecute the proceedings and regain the possession of the suit lands, the plaintiffs decided to sell the suit land. The defendants agreed to purchase the suit lands for a consideration of Rs.1,51,00,000/-. As the names of the plaintiffs were not mutated to the record of rights of the suit land, instead of a registered instrument, a Notarized Agreement for Sale dated 30th April, 2015 came to be executed. The defendants had allegedly paid part consideration of Rs.22,00,000/- only and committed default in payment of the balance consideration. Since the defendants did not show readiness and willingness to perform their part of the contract for over six and half years, the plaintiffs instituted a suit for a declaration that the Agreement for Sale and the Power of Attorney executed by the plaintiffs in favour of the plaintiff were void and be cancelled.

3. The defendants filed an application for rejection of the plaint on the ground that the suit was barred by law of limitation and a suit for mere declaration without seeking the consequential relief of possession was not maintainable.

4. By the impugned order, the learned Civil Judge rejected the application observing, *inter alia*, that the question of limitation was a mixed question of facts and law and evidence was required to be adduced to determine the said question.

Therefore, the plaint cannot be rejected at the threshold as being barred by limitation.

5. Mr. Shettiger, the learned Counsel for the applicants, would urge that, the learned Civil Judge committed an error in law in rejecting the application for rejection of the plaint despite the suit being *ex facie* barred by law of limitation. In accordance with the terms of the Agreement for Sale, part of the balance consideration was to be paid on 30th November, 2015 and 31st March, 2016. Thus, the institution of the suit in the year 2023 was clearly barred by law of limitation.

6. Ordinarily, the issue of limitation is a mixed question of facts and law. However, as enunciated by the Supreme Court in the case of *Shri Mukund Bhavan Trust and others vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another*¹ if from the averments in the plaint the Court finds that, the suit is *ex facie* barred by law of limitation, the Court is not denuded of the power to reject the plaint under the provisions of Order VII Rule 11(d) of the Code. Where, however, the question of limitation turns upon the decision on facts, the plaint cannot be rejected on the ground of bar of limitation as

¹ 2024 SCC Online SC 3844.

such determination would warrant investigation into facts and application of the law thereto.

7. In the case at hand, it is imperative to note that, the defendants claim that they were ready and willing to perform their part of the contract by paying the balance consideration. Yet, it does not appear that the defendants instituted a suit for specific performance of the contract contained in the Agreement for Sale. In normal circumstances, if the defendants were ready and willing to perform their part of the contract they were expected to seek specific performance of the contract and, upon refusal, institute a suit for the same.

8. From the perusal of the averments in the plaint, it becomes evidently clear that, the plaintiffs have approached the Court with a categorical case that after parting with the initial consideration, the defendants did not comply with their part of the contract by paying the balance consideration. Thus, the plaintiffs are seeking a declaration that, the Agreement for Sale is rendered void and for cancellation of the said instrument.

9. In these circumstances, the contention of the applicants that the period of limitation for the declaration and cancellation of the instrument would commence from the date of default in the payment of part consideration would warrant adjudication.

From the perusal of the recitals in the Agreement for Sale, it becomes explicitly clear that the performance of the contract contained in the said Agreement was contingent upon the outcome of the suit for declaration of ownership filed by the plaintiffs. The parties had agreed that the Sale Deed would be executed after the decision in the said suit and the proceedings before the Revenue Authority and the mutation of the names of the plaintiffs to the record of rights of the suit lands.

10. In this view of the matter, the issue of bar of limitation to the suit becomes a mixed question of facts and law. The learned Civil Judge was thus justified in holding that, the suit was not *ex facie* barred by law of limitation so as to warrant the rejection of the plaint. Since the impugned order does not suffer from any jurisdictional error or material irregularity, no interference is warranted in the impugned order.

11. Hence, the application stands dismissed.

[N. J. JAMADAR, J.]