

**IN THE HIGH Court OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO.3262 OF 2024

IN

SUIT NO.1033 OF 2016

Amey Realty & Construction LLP,]
a Partnership Firm having its office at GB,]
"Shiv Chhaya", Sir M.V. Road, Andheri]
(East), Mumbai- 400 069.] ... Applicant
(Orig. Defendant No.9)

In the matter between

Shree Construction Company,]
a Partnership firm registered under Indian]
Partnership Act, 1932, having its office at]
Neelashree, 3rd Floor, Aarey Road,]
Goregaon (East), Mumbai- 400 063.]... Plaintiff

versus

1. Bagwe Housing Private Ltd.,]
A Company registered under the Companies]
Act, 1956 and having its registered office at]
D-15, MIDC Central Road, Near Seepz]
Marol, Andheri (East), Mumbai-400 093]
and office at G/128, Ansa Industrial Estate,]
Saki Vihar Road, Andheri (East),]
Mumbai-400 072.]

2. Rajdulari Ramdular Pande,]
Age: Not known, Occupation Housewife]

3. Laxminarayan Ramdular Pande,]
Age: 61 years, Occupation Not Known]

4. Satyanarayan Ramdular Pande,]
Age: 58 years, Occupation Not Known]

5. Sheshnarayan Ramdular Pande,]
Age: 54 years, Occupation Not Known]

6. Vijaykumar Ramdular Pande,]
Age: Not Known, Occupation Not Known]

7. Santoshkumar Ramdular Pande,]
 Age: Not known, Occupation Not Known]

8. Pushpavati Ramdular Pande,]
 Age: 43 years, Occupation Not known]
 Defendant Nos.2 to 8 of Mumbai Indian]
 Inhabitants residing at A/601, Gajalaxmi]
 Apartment, Parsi Panchayat Road, Old]
 Nagardas Road, Andheri (East),]
 Mumbai-400 069.]

9. Amey Realty & Construction LLP]
 (Previously known as Amey Construction)]
 a Limited Liability Partnership having]
 its office at GB, "Shiv Chhaya", Sir M.V.]
 Road, Andheri, Mumbai-400 069.]... Defendants

**WITH
 INTERIM APPLICATION NO.3487 OF 2024
 IN
 SUIT NO.1033 OF 2016**

Shree Construction Company]
 a partnership firm registered under Indian]
 Partnership Act, 1932, having its office at]
 Neelashree, 3rd Floor, Aarey Road, Goregaon]
 (East), Mumbai-400 063.] ...Applicant
 (Original Plaintiff)

versus

1. Bagwe Housing Private Ltd., a]
 company registered under the]
 Companies Act, 1956 having its]
 registered office at D-15, MIDC Central]
 Road, Near Seepz Marol, Andheri (East),]
 Mumbai-400 093 and office at G/128,]
 Ansa Industrial Estate, Saki Vihar Road,]
 Andheri (East), Mumbai-400 072.]

2. Rajdulari Ramdular Pande,]
 Age: Not Known, Occupation Housewife]

3. Laxminarayan Ramdular Pande,]
 Age: 61 years, Occupation Not Known]

4. Satyanarayan Ramdular Pande,]
Age:58 years, Occupation Not Known]
5. Sheshnarayan Ramdular Pande,]
Age: 54 years, Occupation Not Known]
6. Vijaykumar Ramdular Pande,]
Age: Not Known, Occupation Not Known]
7. Santoshkumar Ramdular Pande,]
Age: Not known, Occupation Not Known]
8. Pushpavati Ramdular Pande,]
Age: 43 years, Occupation Not known]
Defendant Nos.2 to 8 of Mumbai Indian]
Inhabitants residing at A/601, Gajalaxmi]
Apartment, Parsi Panchayat Road, Old]
Nagardas Road, Andheri (East),]
Mumbai-400 069.]
9. Amey Realty & Construction LLP]
(Previously known as Amey Construction)]
a Limited Liability Partnership having]
its office at GB, "Shiv Chhaya", Sir M.V.]
Road, Andheri, Mumbai-400 069.]... Defendants

WITH
MISCELLANEOUS CIVIL APPLICATION NO.199 OF 2025
(APPELLATE SIDE)

Shree Construction Company]
a partnership firm having their office at]
Neelashree, 3rd Floor, Aarey Road, Goregaon]
(East), Mumbai-400 063.] ...Applicant
(Original Plaintiff)

versus

1. Bagwe Housing Private Ltd., a]
company registered under the]
Companies Act, 1956 having its]
registered office at D-15, MIDC Central]
Road, Near Seepz Marol, Andheri (East),]
Mumbai-400 093 and office at G/128,]
Ansa Industrial Estate, Saki Vihar Road,]
Andheri (East), Mumbai-400 072.]

2. Rajdulari Ramdular Pande,]
Age: Not Known, Occupation Not Known]
3. Laxminarayan Ramdular Pande,]
Age: Not Known, Occupation Not Known]
4. Satyanarayan Ramdular Pande,]
Age: Not Known, Occupation Not Known]
5. Sheshnarayan Ramdular Pande,]
Age: Not Known, Occupation Not Known]
6. Vijaykumar Ramdular Pande,]
Age: Not Known, Occupation Not Known]
7. Santoshkumar Ramdular Pande,]
Age: Not known, Occupation Not Known]
8. Pushpavati Ramdular Pande,]
Age: Not known, Occupation Not Known]
- all of Mumbai Indian Inhabitants]
residing at A/601, Gajlaxmi Apartment,]
Parshi Panchayat Road, Old Nagardas Road,]
Andheri (East), Mumbai-400 069.]
9. Amey Realty and Construction LLP]
registered under the Limited Liability]
Partnership Act 2008 having their]
registered office at GB Shiv Chhaya,]
Sir M.V. Road, Andheri East, Mumbai,]
Mumbai City, Maharashtra -400 069.]... Respondents

Mr. Shanay Shah, a/w Ms. Shruti Maniar and Adv. Jyotika Raichandani, i/by M/s. Solomon & Co. for the Plaintiff/Applicant in IA/3262/2024, MCA/199/2025.

Mr. Sandeep Mahadik for the Defendant No.1.

Mr. Sharan Jagtiani, Senior Advocate, a/w Adv. Muttahar Khan, a/w Ms. Jinal Mehta, i/by Mehta & Co. for the Defendant Nos.2 to 9

CORAM : KAMAL KHATA, J.
RESERVED ON : 10th September 2025.
PRONOUNCED ON : 29th September 2025.

JUDGMENT:

1) By this Interim Application, the Defendant No. 9 seeks rejection of the Plaint under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 (CPC).

2) Mr. Sharan Jagtiani, learned Senior Counsel for the Defendant No. 9 submits that the present Suit mainly seeks a declaration to cancelling/ nullifying two Deeds of Surrender both dated 13th February 2006 executed between Defendant No. 1 and Defendant Nos. 2 to 8.

3) The Plaintiff's case is that by an agreement dated 15th July 1994, Defendant Nos. 2 to 8 had granted development rights in respect of the Suit property bearing old CTS Nos. 182 and 182/1 to 5, admeasuring 4972 square meters., now bearing CTS Nos. 182/A, 182/B, 182/C, 182/D, 182/E admeasuring 5057.70 square meters, situate at Village Mogra, Taluka- Andheri, Mumbai Suburban District, Old Nagardas Road, Andheri (East), Mumbai - 400069.

4) Pursuant to the agreement, Defendant Nos. 2 to 8 executed Power of Attorney dated 26th October 1994 and 26th April 2002 in favour of Defendant No. 1 to enable it to act in respect of the

said property. Thereafter, Defendant No.1 awarded a construction contract to the Plaintiff by an agreement dated 13th January 1999 for construction of buildings on Segment I (CTS No. 182/A) and Segment III, (CTS No. 182/C to E). Further, by an agreement dated 26th February 1999, the Plaintiff was appointed the sole selling agent of Defendant No. 1 for sale of flats in the buildings to be constructed on Segment I and III.

5) The Plaintiff is aggrieved by the Deeds of Surrender dated 13th February 2006 under which the Defendant No. 1 surrendered /relinquished its rights under the agreement dated 15th July 1994 to Defendant Nos. 2 to 8 and revoked the above Powers of Attorney dated 26th October 1994 and 26th April 2002 in respect of Segment III admeasuring 1693.09 square meters. The Plaintiff also challenges the Deed of Conveyance dated 26th December 2006 executed between Defendant Nos. 2 to 8 and Defendant No. 9, whereby CTS Nos. 182/C to E were conveyed to Defendant No. 9.

6) Mr. Jagtiani points to paragraph nos. 27 and 45 of the plaint to show that the Plaintiff admittedly had knowledge of the Deeds of Surrender, evinced by its Advocates' letter dated 21st December 2009. Accordingly, any Suit ought to have been filed by 21st December 2012. The present suit, filed only on 20th August 2016 is 6 years and 8 months later, and hence *ex-facie* barred by

limitation. He submits paragraph no.57 discloses no explanation and the said suit is vexatious, filed only to stall development and extract a nuisance – value settlement.

7) Mr. Shah, learned Counsel for the Plaintiff, contends that under the agreement dated 15th July 1994 between the Defendant Nos. 2 to 8 (owners) and Defendant No. 1 (developer), the Plaintiff as Power of Attorney holder took several steps. In Segment I, it demolished structures and successfully completed construction “Gajalakshmi” building on CTS 182/A where four flats were allotted to Defendant Nos. 2 to 8. This, he submits, shows performance and benefit received by Defendant Nos. 2 to 8 as owners under the contract.

8) As regards Segment II (CTS 182/B), construction was completed and handed to Brihanmumbai Municipal Corporation (BMC). For Segment III, defaults of Defendant Nos 2 to 8 prevented construction. The Deeds of Surrender themselves, he argues, acknowledge Plaintiff's rights by requiring cancellation of Plaintiff's Powers of Attorney. No such consent was given; hence, the Deeds of Surrender are invalid not binding on the Plaintiff. He also relies upon ownership agreements dated 26th December 2006, allotting flat Nos. C501, A601 and C601 in Gajalakshmi to Defendant Nos. 3, 4 and 5 in lieu of the consideration mentioned in the agreement dated

15th July 1994, which have been registered with the Sub Registrar of Assurances and Clause 22 of the agreement dated 15th July 1994, under which the Defendant No. 1 was entitled to TDR, in segment III and in lieu of TDR, Defendant No. 1 allotted flat No. B/101 to Defendant Nos. 2 to 8 in Wing B of Gajalakshmi under the agreement dated 8th April 2008. Recitals No. 4 and 5 of the agreement dated 8th April 2008 confirm the subsistence of 1994 agreement and Defendant No.1's authority to develop. Referring to these recitals in the agreement as well as the Deeds of Surrender, Mr Shah submits that at all times Defendant Nos. 2 to 8 were aware of the rights of the Plaintiffs in the Suit properly and expressly consented to the same.

9) Mr. Shah further submits that Defendant No. 4 and his daughter-in-law are partners of Defendant No. 9, hence aware of Plaintiff's rights. He invokes Section 19 of the Specific Relief Act to argue that contracts bind not only parties but also persons claiming under them. Thus, the Plaintiff can seek performance not only against Defendant No.1 but also Defendant Nos 2 to 9 there being privity of contract and being aware of the Plaintiff's rights in the Suit property. On limitation, he relies on Clause 12 of the agreement dated 13th January 1999 making Defendant No. 1 responsible to obtain the Commencement Certificate for Segment III. Since this was never obtained, he argues that limitation has not commenced as averred in

paragraph no.57 of the plaint.

10) Relying on Article 54 of the Limitation Act, 1963, and judgments in the case of *Shakti Bhog Food Industries Limited Vs. The Central Bank of India*,¹ *Chhotanben Vs. Kiritbhai Jalkrushnabhai Thakkar*,² *Arjan Singh Vs. Union of India*.³, he contends that limitation is a mixed question of law and fact and the same cannot be decided summarily. He further contends that the period of limitation in case of specific performance begins from the date fixed for performance or when the Plaintiff the performance is refused. In the present case, the date when the Defendant No. 1 would obtain the Commencement Certificate from the MCGM would be the date for performance.

11) In view of the aforesaid, he submits that the Suit ought not to be decided in a summary manner under Order VII Rule 11 and a detailed consideration of facts and merits is required for which evidence ought to be led by the parties and accordingly seeks dismissal of the Interim Application.

Reasoning:

12) I have considered the rival submissions and the record.

13) It is settled law that the Court must consider only

¹ (2020) 17 SCC 260.

² 2018 6 SCC page 422

³ 1986 SCC OnLine Del 110

averments in the plaint and the documents annexed thereto while deciding an application under Order VII Rule 11. Having examined the averments in the plaint and the Deeds of Surrender exhibited with it, I find that the Plaintiff has not established any privity of contract with Defendant Nos. 2 to 8 or with Defendant No. 9.

14) In my view, the Plaintiff's cause of action lies, if at all, only against the Defendant No. 1, with whom contract was executed. Mr. Shah has not cited any judgment supporting the contention that mere "awareness" constitutes privity of contract. Admittedly, no agreement exists between the Plaintiff and Defendant Nos. 2 to 8. Mere "awareness" cannot create privity.⁴ Since no agreement recognized in law exists between the Plaintiff and Defendant Nos. 2 to 8, much less Defendant No. 9, no enforceable right arises against them. The admission of Plaintiff as to 'awareness', certainly does not constitute privity of contract, but it does something else. It starts the clock ticking against him.

15) I find merit in Mr. Jagtiani's submission. Referring to paragraph no.27 of the plaint, he highlights that the Plaintiff was aware of Deeds of Surrender at least by 21st December 2009. Any challenge ought to have been filed within the stipulated period of 3 years, i.e., on or before 21st December 2012, in terms of Article 58 of the Limitation Act, 1963. Having failed to do so, and having filed a

⁴ KPM Builders Pvt. Ltd. Vs. NHAI & Anr. (2015) 15 SCC 394.

Suit nearly six years later, the claim is clearly barred against the Defendant No. 9. Where the Court derives a conclusion on examining the plaint that the Suit is barred no evidence is required.

16) Reliance is placed on *Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra)*,⁵ wherein in the Supreme Court reiterated that Order VII Rule 11 provides an independent and special remedy empowering Courts to summarily dismiss a Suit at the threshold if barred by limitation or disclosing no cause of action. The Court stressed that unnecessary protraction of sham litigation must be avoided. The provisions are mandatory, and where any ground under clauses (a) to (e) is made out, rejection of the plaint is inevitable.

17) In *ITC Limited Vs. Debts Recovery Appellate Tribunal*,⁶ the Supreme Court held that clever drafting creating an illusion of a cause of action cannot be permitted and only if a clear right is made out in the plaint, it deserves to be allowed.

18) In *Madanuri Shri Rama Chandra Murthy Vs. Syed Jalal*,⁷ the Supreme Court held that bogus litigations should be “nipped in the bud” and Courts must remain vigilant against camouflage or suppression and determine whether the litigation is vexatious or an abuse of the process of the Court.

⁵ (2020) 7 SCC 366.

⁶ (1998) 2 SCC 70.

⁷ 2017 SCC OnLine SC 459

19) In *Khatri Hotels (P) Ltd. Vs. Union of India*⁸ the Apex Court clarified that where multiple causes of action are alleged, limitation begins from the first accrual of the right to sue; successive violations do not generate fresh causes.

20) In my view, these principles squarely apply to the facts of the present case. In my view, paragraph 27 of the Plaint clearly establishes that the Plaintiff was aware about the Deeds of Surrender. If not in 2006, then certainly by 21st December 2009, as stated in its Advocates letter. Therefore, the cause of action, if any, arose then, and the Plaintiff ought to have sued on or before 21st December 2012.

21) In these circumstances, the filing of the Plaint on 20th August 2016 is clearly beyond limitation. I find no merit in the contention that the Defendant No. 1's obligation to obtain Commencement certificate for Segment III deferred the limitation period. The Plaintiff's contract was solely with Defendant No. 1; there is no evidence to show a contract with Defendant Nos. 2 to 9. Hence, mere awareness or receiving incidental benefits arising from Defendant No. 1's actions cannot confer upon the Plaintiff any enforceable right against Defendant Nos. 2 to 9.

22) In my view, execution of a Power of Attorney in favour of the Plaintiff by Defendant No.1 does not confer any right to sue

⁸ 2011 SCC OnLine SC 1236

Defendant Nos. 2 to 9. The Plaintiff lacks cause of action against them because:

A. No privity of contract exists between the Plaintiff and Defendant Nos. 2 to 9.

B. The Joint development agreement dated 15th July 1994 is between 2 to 8 and Defendant No. 1; Plaintiff is not a party.

C. The Powers of Attorney by Defendant Nos 2 to 8 in favour of Defendant No. 1 do not refer to the Plaintiff. The agreements dated 13th January 1999 and 26th February 1999 are only between the Defendant No. 1 and the Plaintiff.

E. The Plaintiff is not a party to the Deed of Surrender dated 13th February 2006.

F. The Defendant Nos. 2 to 9 cannot be treated as “claiming under” Defendant No.1; if anything, rights flowed from Defendant Nos. 2 to 8 to Defendant No. 1, and not vice versa.

23) Reliance by Mr. Jagtiani on *Patil Automation Private Limited & Ors. Vs. Rakheja Engineers Private Limited*⁹ to submit that the Court can, even suo motu, reject a plaint where Order VII Rule 11 grounds are made out, is also well-taken.

24) Considering the above, the Suit is *ex-facie* barred by limitation and discloses no cause of action against Defendant

⁹ (2022) 10 SCC 1.

Nos. 2 to 9.

25) Accordingly, the Suit stands dismissed against Defendants Nos.2 to 9.

(KAMAL KHATA, J.)

26) At this stage, learned Advocate for Plaintiff request for stay. In view of the aforestated reasons, the request for stay is rejected.

MISCELLANEOUS CIVIL APPLICATION NO.199 OF 2025:

27) In view of the dismissal of the Suit against the Defendant Nos.2 to 9, the Miscellaneous Civil Application No.199 of 2025 seeking the transfer of Suit No.0100957 of 2024 (High Court Suit No.309 of 2014) from the the City Civil Court, Mumbai stands dismissed as infructuous.

(KAMAL KHATA, J.)