

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 2301 OF 2025

IN

SUIT NO. 295 OF 2023

WITH

SUIT NO. 295 OF 2023

Zaphna Properties Pvt. Ltd. and Ors.

...Applicants /
Original Defendants

In the matter between

Pansn Construction and Developers
Private Limited

...Plaintiff

Versus

Zaphna Properties Pvt. Ltd. and Ors.

...Defendants

WITH

INTERIM APPLICATION NO. 2771 OF 2025

IN

SUIT NO. 295 OF 2023

Mr. Naresh Thacker a/w Mr. Ashishchandra Rao a/w Ms. Anuli Mandlik and Ms. Vanshika Kainya i/by Economic Laws practice for the Applicants / the Defendants.

Mr. Vishal Kanade a/w Ms. Janhavee Joshi, Ms. Aruna Mehta, Mr. Ramesh Gupta i/by M/s. S. Pathak & Co. for the Plaintiff.

CORAM : R.I. CHAGLA J

DATE : 4 August 2025

ORDER :

1. By this Interim Application, the Applicants / original Defendant Nos. 1 to 3 have sought rejection of Plaint under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 on the ground that the Plaintiff has failed to demonstrate a cause of action in the Plaint and that the Suit is barred by the law of limitation.

2. The facts briefly stated are as under :-

- (i) The Applicants / Defendants are the owners of the land and building which are described as land admeasuring approximately 1129.18 sq.mts., bearing CTS Nos. C/1550, C/1551, C/1552 and C/1554, situated at Carter Road, Rajan Pakhadi at Bandra, in the Revenue Village of Danda, Andheri Taluka, Mumbai and building described as front building 'Shanti Sagar' standing on the Land consisting of ground floor and four upper floors, along with the structure admeasuring 120 sq.ft. on the rear side of the Land (colly. Referred to as "the

said property”).

- (ii) In the year 1999, the said Property consisted of two buildings; (a) One consisting of ground plus two upper floors (“**front building**”) and (b) one on the rear end of the building consisting of ground plus three upper floors (“**rear building/annex building**”).
- (iii) The Plaintiff and Defendant No. 1 executed a Development Agreement on 5th March 1999, whereby Defendant No. 1 granted restricted development rights to the Plaintiff in the land and front and annex buildings.
- (iv) Defendant No. 1 terminated the Development Agreement on 15th November 2002. The termination of the Development Agreement was unequivocally accepted by the Plaintiff, as evident from the Cancellation Agreement entered into thereafter.

- (v) Plaintiff and Defendant No. 1 executed an Agreement of Cancellation and Fresh Understanding (“**Cancellation Agreement**”) on 14th March 2003. As per the Cancellation Agreement, the obligations of Defendant No. 1 *inter alia* was to retain the Plaintiff as a construction company specifically for completing the unfinished construction of the third and fourth floors of the front side of the ‘Shanti Sagar’ building at that time and their expertise in securing an Occupation Certificate in respect thereof. The Plaintiff was obligated to regularize the construction on the third and fourth floor of the front building by obtaining an Occupation Certificate on or before 11th August 2003, at its own cost. Defendant No. 1 was obligated to pay to the Plaintiff a sum of INR 61,00,000/- towards the cost of construction, of which INR 11,00,000/- was paid by Defendant No.1 to the Plaintiff on execution of the Cancellation Agreement.

- (vi) Defendant No. 1 on 14th March 2003 shared a Draft Conveyance Deed with the Plaintiff i.e. the Draft Deed of Conveyance that the Plaintiff is attempting to seek specific performance of.
- (vii) Defendant No. 1 paid to the Plaintiff a sum of INR 5,00,000/- out of the balance INR 50,00,000/- to be paid under the Cancellation Agreement, basis the representation that the Plaintiff will obtain an Occupation Certificate in respect of the additional floors.
- (viii) The Plaintiff and Defendant No. 1 executed Agreement of Modification & Fresh Understanding (**“Modification Agreement”**). The Modification Agreement was entered into in view of the Plaintiff having not complied with the terms of the Cancellation Agreement by adhering to the time period for completion of obligations under the Cancellation Agreement and accordingly, by the Modification Agreement the time period was

extended till 5th November 2003 for obtaining of an Occupation Certificate.

- (ix) Defendant No. 1 deposited a sum of INR 15,00,000/-, with the Plaintiff which the Plaintiff was entitled to appropriate towards the cost of construction only upon obtaining Occupation Certificate.
- (x) The Plaintiff was obligated to obtain Occupation Certificate in terms of the Modification Agreement read with the Cancellation Agreement on 5th November 2003. However, on the said date, the Plaintiff failed to do so.
- (xi) Defendant No. 1 addressed a letter on 20th September 2004 to the Plaintiff stating that in furtherance of the Cancellation Agreement, the Plaintiff would not insist for conveyance of the property in terms of the letter dated 14th March 2003. It is pertinent to note that the said letter has

been annexed at Exh.D to the Written Statement, but is not annexed to the Plaint.

- (xii) The Plaintiff assured the Defendants in January 2006 that the Occupation Certificate would be obtained on or before 1st March 2006.
- (xiii) Defendant No. 1 paid a sum of INR 27,95,770/- on behalf of the Plaintiff to the Municipal Corporation of Greater Mumbai (“**MCGM**”). This payment had been made based on the assurance that the Plaintiff will obtain the Commencement Certificate before 10th February 2006 and the Occupation Certificate in respect of the additional floors on or before 1st March 2006.
- (xiv) The Plaintiff demolished the rear building between January to May 2006, except the structure occupied by one occupant M/s Chromewell Industries Pvt. Ltd.

- (xv) Upon the payment made by Defendant No. 1 in January 2006, the Occupation Certificate was granted by the MCGM on 12th May 2006.
- (xvi) The Plaintiff, through its advocates, addressed a letter on 18th July 2006 to Defendant No.1 requesting a meeting to discuss the Draft Deed of Conveyance forwarded by Defendant No. 1 on 14 March 2003.
- (xvii) A Meeting was held on 21st June 2006 between the Plaintiff and Defendant No. 1.
- (xviii) Defendant No. 1 addressed a letter dated 24th July 2006 to the Plaintiff recording that a meeting was held on 21st June 2006 and listing pending tasks and issues that remained unresolved as on date.
- (xix) The Plaintiff replied to Defendant No. 1's letter dated 24th July 2006 on 26th July 2006. The Plaintiff stated in the said letter that it was

depositing a sum of INR 11,00,000/- towards conveyance of the property to the Plaintiff. Further, the Plaintiff stated that *“the issue of conveyance is pending at your end and you have sought advice of your legal adviser...”*.

- (xx) The Plaintiff’s advocates addressed a letter dated 2nd August 2006 to Defendant No. 1’s advocates *inter alia* stating that *“you have been engaged as Advocates & Solicitors by your clients inter alia for preparation/approval of the Deed of Conveyance to be executed by your clients in favour of our clients in respect of the abovementioned property”* .

The Plaintiff’s advocates enclose a cheque of INR 11,00,000/- along with the letter to be kept in escrow with Defendant No. 1’s lawyers, pending execution of Deed of Conveyance.

- (xxi) Defendant No. 1 by the letter dated 21st August 2006 replied to the Plaintiff’s letter dated 26th July 2006 explicitly rejecting the payment of any amount

towards conveyance and clarified that the cheque of INR 11,00,000/- was towards amounts due to Defendant No. 1. Defendant No. 1 requested the Plaintiff for confirmation of such understanding, and stated that upon confirmation, such payment of INR 11,00,000/- would be adjusted against the payment due to Defendant No. 1.

(xxii) The Plaintiff's advocates responded to Defendant No. 1's letter dated 21st August 2006 by their letter dated 25th August 2006, whereby the Plaintiff recorded its no objection and authorized Defendant No. 1's advocates to handover the cheque of INR 11,00,000/- to Defendant No. 1.

(xxiii) The Defendant No. 1 addressed a letter dated 7th September 2006 to the Plaintiff, requesting the Plaintiff to confirm that the cheque of INR 11,00,000/- may be encashed by Defendant No. 1.

(xxiv) The Plaintiff on 8th September 2006 confirmed that

Defendant No. 1 may encash the said cheque.

(xxv) The Plaintiff's advocates addressed a letter on 24th July 2012 to the advocates for Defendant No. 1 requesting the advocates for Defendant No. 1 to finalize the Draft of the Development Agreement.

(xxvi) The advocates for Defendant No. 1 by their letter dated 17th August 2012 responded to the letter dated 24th July 2012 stating that the Plaintiff was attempting to incorporate terms of conveyance in the Draft of a Development Agreement, which was unacceptable to Defendant No. 1.

(xxvii) The Plaintiff addressed a letter dated 21st December 2020 to Defendant No. 1 and Defendant No. 2, wherein it has reiterated its claim on the Draft Conveyance Deed and for execution of the same.

(xxviii) The advocates for the Plaintiff addressed letter

dated 22nd September 2022 to Defendant No. 1 reiterating its claim regarding the Draft Deed of Conveyance.

(xxix) The advocates for Defendant No. 1 by letter dated 18th October 2022 addressed to the Plaintiff denied allegations regarding the Draft Deed of Conveyance and/or obligations thereto.

3. Mr. Naresh Thacker, the learned Counsel for the Applicants / original Defendant Nos. 1 to 3 has submitted that the Plaintiff is seeking specific performance of admittedly a Purported Draft Deed of Conveyance which is *ex facie* impermissible. He has submitted that the Draft Deed of Conveyance had been forwarded by a letter dated 14th March 2003. The contents and terms within this Draft were subject to further negotiations between the parties and required finalisation. He has submitted that there were no further negotiations between the parties concerning the Purported Draft Deed of Conveyance or any other terms related to the alleged conveyance of the said Property.

4. Mr. Thacker has submitted that the Purported Draft Deed of Conveyance contains several blanks, which were neither completed nor agreed upon by the parties at any stage. The Purported Draft Deed of Conveyance makes reference to the Defendants agreeing to convey the subject premises as delineated within a red boundary line, to be annexed as Annexure I. However, no such Annexure is appended to the Purported Draft Deed of Conveyance. He has submitted that it is evident that there was no consensus *ad idem* between the parties with respect to the terms and conditions set out in the said Draft Deed of Conveyance. Consequently, the contents of the said Draft were neither binding, nor intended to create any binding obligation between the parties.

5. Mr. Thacker has submitted that no cause of action can arise from an agreement that is unstamped, unregistered, and/or unexecuted. Admittedly, the Purported Draft Deed of Conveyance was not executed. He has submitted that it is a settled principle of law that for any agreement to constitute a valid and binding contract capable of enforcement, there must exist consensus *ad idem* between the parties on all essential terms, including but not limited to the area to be conveyed and the consideration payable.

6. Mr. Thacker has submitted that it is an admitted position that the Purported Draft Deed of Conveyance was neither executed nor finalised between the parties. The absence of any concluded understanding on these fundamental aspects renders the Purported Draft Deed of Conveyance incomplete and unenforceable in law. He has submitted that in the absence of a concluded and executed contract, no legal rights or obligations can be said to have arisen between the parties, and consequently, no cause of action can be said to exist in favour of the Plaintiff.

7. Mr. Thacker has submitted that the Plaintiff has failed to identify which rights have been infringed. Assuming without admitting that the Plaintiff claims that the Defendants breached the Purported Draft Deed of Conveyance, the Plaintiff itself shows that (a) no conclusive agreement to convey the property was made between the parties; (b) no consideration was paid towards the Purported Draft Deed of Conveyance and (c) the Defendants unequivocally did not intend to act in furtherance of the same.

8. Mr. Thacker has submitted that the consideration under the Purported Draft Deed of Conveyance was in three parts. Firstly,

the Plaintiff was required to pay an amount of INR. 11,00,000 to the Defendants on or before execution of the conveyance. Secondly, the Plaintiff was to transfer two apartments to the Defendants, on the 3rd and 4th floor of the front building, the area of which has not been filled up in the said Draft Deed of Conveyance. Thirdly, the Third Schedule of the Draft Deed of Conveyance, which was intended to specify the facilities to be provided, was left blank and incomplete. Furthermore, the plan of the premises, which forms an essential part of any conveyance, was not annexed to the Draft Deed. He has submitted that the area of the said apartments and the facilities to be provided aforesaid, was never mutually agreed or finalised between the parties. Therefore, the consideration forming the basis of the conveyance of the said property remained undefined at the time the Purported Draft Deed of Conveyance was sent to the Plaintiff in the year 2003 and continues to remain undefined till date.

9. Mr. Thacker has submitted that the claim that INR 11,00,000/- was paid by the Plaintiff towards conveyance is incorrect. The said amount was paid towards dues owed to Defendant No.1 for payments made by it to the MCGM and not towards any alleged conveyance. He has placed reliance upon the

correspondence exchanged between the parties in that context.

10. Mr. Thacker has submitted that there has been no performance and/or part performance by the Plaintiff of the Purported Draft Deed of Conveyance. He has submitted that the Plaintiff was in fact put in possession of certain flats in the front building of Shanti Sagar *in lieu* of its obligations to demolish the rear building and vacating the tenants of the rear building under the original agreements. He has submitted that the Plaintiff is not entitled to seek specific performance of the Purported Draft Deed of Conveyance, as there has been neither any payment of consideration towards the conveyance nor the Plaintiff has been put in possession of the premises forming the subject matter of the said Deed.

11. Mr. Thacker has referred to Section 54 of the Transfer of Property Act, 1882 in order to submit that the sale has been defined as transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. He has submitted that admittedly the essential terms of the purported conveyance, specifically the consideration, area of the property and facilities, were never finalised nor mutually agreed between the parties. He has

submitted that in the absence of such finalised terms and without any payment of consideration, there was neither any “sale” effected nor intended to be effected under the said Draft Deed of Conveyance. He has submitted that the Purported Draft Deed of Conveyance does not create any right, title, interest, or charge in favour of the Plaintiff and is wholly unenforceable in law.

12. Mr. Thacker has referred to Sections 9 and 10 of the Specific Relief Act, 1963. He has submitted that it is pertinent to note that the remedy under the Specific Relief Act, 1963 allows specific performance only in respect of a valid and subsisting “contract”. He has submitted that it is an admitted position that there was no concluded or finalised agreement between the parties, particularly in light of the absence of consensus on essential terms as aforementioned. He has submitted that in the absence of a contract itself, the relief of specific performance is not maintainable.

13. Mr. Thacker has submitted that the Draft Deed of Conveyance was admittedly neither signed nor executed by the parties nor was it stamped or registered under Section 17 read with Section 49 of the Registration Act, 1908. He has submitted that in the

absence of execution and registration, the said document does not qualify as a valid agreement in the eyes of law.

14. Mr. Thacker has submitted that consequently, such an unexecuted and unregistered Draft Deed of Conveyance cannot form the basis of a decree for specific performance, nor can it be relied upon to prove title or create any right in respect of immovable property. The said document is, at best, a tentative draft and does not confer any enforceable legal rights upon the Plaintiff.

15. Mr. Thacker has placed reliance upon the judgment of the Supreme Court in **Balram Singh Vs. Kelo Devi**¹, which has held that since the agreement to sell was an unregistered document, no decree for specific performance could be passed based on such an unregistered agreement.

16. Mr. Thacker has also placed reliance on the judgment of the Punjab and Haryana High Court in **Gurbachan Singh Vs. Raghubir Singh**², which has held that an unregistered agreement

¹ 2022 SCC OnLine SC 1283

² 2009 SCC OnLine P&H 10973

does not provide the right to seek a decree for specific performance. Consequently, the Plaintiff was not entitled to retain possession under the guise of such an agreement. He has submitted that the judgment emphasizes that possession alone, without a valid registered agreement, does not entitle a party to seek specific performance.

17. Mr. Thacker has submitted that the Plaintiff's submission regarding the Defendants' purported non-termination of the Draft Deed of Conveyance is erroneous.

18. Mr. Thacker has submitted that the Plaintiff has filed the Suit for declaration and specific performance. He has submitted that if this Court cannot grant specific performance, the only remaining prayer is for declaration. It is well settled that a Suit merely for declaration is not maintainable. It is therefore submitted that none of the prayers of the Plaintiff as prayed for in the Suit survive and the Suit has to be dismissed.

19. Mr. Thacker has submitted that the Suit is barred by law of limitation. He has placed reliance upon Article 54 of the Schedule to the Limitation Act which pertains to the limitation period

for seeking specific performance of a contract. It is provided that the period of limitation is three years from the date fixed for the performance, or, if no such date is fixed, when the Plaintiff has notice that performance is refused.

20. Mr. Thacker has submitted that the Agreement of Cancellation and Fresh Understanding dated 14th March 2003 provided that the Plaintiff was required to obtain the Occupational Certificate on or before 11th August 2003. Simultaneously when the Draft Deed of Conveyance was forwarded to the Plaintiff along with letter dated 14th March 2003, it was recorded that the execution of the Draft Deed of Conveyance was conditioned upon the Occupation Certificate having being obtained as per the terms of the Agreement of Cancellation and Fresh Understanding i.e., by 11th August 2003. He has submitted that the condition was never extended.

21. Mr. Thacker has submitted that even a plain reading of the Agreement for Modification and Fresh Understanding dated 5th September 2003, shows that it does not record any such alleged extension being granted to the Plaintiff for the conveyance. He has submitted that by operation of the condition not being met,

the Defendants were not obligated to execute the Draft Deed of Conveyance.

22. Mr. Thacker has submitted that without prejudice to the above and assuming without admitting that the condition of obtaining the Occupation Certificate was extended to 5th November 2003, the same was not achieved by the Plaintiff.

23. Mr. Thacker has submitted that the time for performance under the letter dated 14th March 2003, for execution of the conveyance was fixed on 11th August 2003. The limitation for specific performance, if at all, under Article 54 of the Limitation Act, 1963 would expire on 10th August 2006. He has submitted that it is immaterial whether any correspondence was exchanged between the parties after 10th August 2006 regarding the discussions on the Purported Draft Deed of Conveyance. He has submitted that the Suit was grossly barred by the law of limitation.

24. Mr. Thacker has submitted that in any event, even if one was to take the date when the Occupation Certificate was ultimately obtained i.e. 12th May, 2006, the Plaintiff's right to sue for

specific performance to obtain the conveyance of the Property expired on 11th May 2009.

25. Mr. Thacker has submitted that in any event, the Suit is barred by limitation since the year 2015. He has placed reliance upon the Defendant's Advocate's letter dated 17th August 2012. By the said letter, it was made clear that the Plaintiff was attempting to incorporate terms of conveyance in the draft Development Agreement and the same was not acceptable. The Plaintiff therefore, had notice of the Defendants' refusal to convey the said Property as on 17th August 2012, if not prior. Since there was a refusal of performance by Defendant No.1, the Plaintiff's right to sue for specific performance would expire on 16th August, 2015.

26. Mr. Thacker has submitted that it is clear from the correspondence on record that the only discussion between the parties from July, 2012 was regarding a "Development Agreement" in which the Plaintiff attempted to incorporate terms of the conveyance and which was expressly refused by Defendant No. 1.

27. Mr. Thacker has submitted that without prejudice

to the above, the Plaintiff has stated in the Plaint that from April, 2016, the Plaintiff did not receive any Debit Note/statement of Plaintiff's share of property taxes and charges/expenses despite repeated requests. He has submitted that assuming that the statement of the Plaintiff is correct, and that he was receiving debit notes for the Plaintiff's alleged share in the property taxes till April 2016, the very fact that he stopped receiving the debit notes from Defendant No. 1 would be refusal of performance and would demonstrate intention to deny performance of the Purported Draft Deed of Conveyance. Therefore, the Plaintiff's right to sue for specific performance would expire in April 2019.

28. Mr. Thacker has submitted that the Plaintiff's Suit is barred by limitation since the Plaintiff did not file it within the purported date fixed for the performance of the contract, or, in the absence of such a fixed date, from the time when the Plaintiff receives notice that performance of the contract has been refused i.e., August 2012. Mere issuance of the legal notice by the Plaintiff to Defendant No. 1 and Defendant No. 2 attempting to concoct a cause of action, does not circumvent the laws of limitation.

29. Mr. Thacker has placed reliance on the judgment of the Supreme Court in **C.S. Ramaswamy Vs. V.K. Senthil & Ors.**³, wherein the Supreme Court has held that the cause of action pleaded in the Plaint must be carefully considered. A Plaintiff cannot use clever drafting to bring a suit within the limitation period. He has also placed reliance on **N.V. Srinivasa Murthy & Ors. vs Mariamma (Dead) & Ors.**⁴, wherein the Supreme Court held that clever drafting cannot be used to circumvent the bar of limitation.

30. Mr. Thacker has placed reliance on **Raghwendra Sharan Singh Vs. Ram Prasanna Singh**⁵, wherein the Supreme Court ruled that although limitation is a mixed question of law and fact, if the averments in the Plaint indicate that the Suit is clearly barred by the law of limitation, it can be rejected under Order VII Rule 11(d) of the C.P.C.. He has further placed reliance upon the judgment of the Supreme Court in **Venkappa Gurappa Hosur Vs. Kasawwa**⁶, wherein the Supreme Court while deciding a Special Leave Petition regarding a Suit filed for specific performance of a sale agreement, held that

³ 2022 SCC OnLine SC 1330

⁴ (2005) 5 SCC 548 at paras 14 to 17

⁵ (2020) 16 SCC 601

⁶ (1997) 10 SCC 66

mere issuance of a notice does not stop the running of time with respect to the limitation period.

31. Mr. Thacker has accordingly, submitted that the present Application be allowed and the Plaint be rejected, both on the grounds of there being no cause of action as well as the Suit being barred by the law of limitation.

32. Mr. Vishal Kanade, the learned Counsel for the Plaintiff has submitted that the Defendants have advanced submissions under Order VII Rule 11 Application as if (i) this Court is conducting a mini trial; (ii) that this Court is required to consider the defense raised by the Defendants instead of examining the Plaint as it stands.

33. Mr. Kanade has submitted that the Defendants have urged this Application precisely in the manner that the Supreme Court holds is not permissible under Order VII Rule 11 of the C.P.C.. He has placed reliance on the judgment of this Court in **Export Credit Guarantee Corporation Vs. T. Mathew and Others**⁷ as well as

⁷ 2014 SCC OnLine Bom 296 [Paragraphs 51,57 & 58]

judgment of the Supreme Court in **Dahiben Vs. Arvinbhai Kalyanji Bhanusali**⁸. He has submitted that the Courts at the stage of deciding an Application for rejection of Plaint are not expected to conduct a detailed enquiry and that such statutory power ought to be used sparingly. It is settled law that when an Application to reject the Plaint is filed, averments in the Plaint and documents annexed therewith are to be looked into and the Courts are expected to proceed on the basis that the contents in the Plaint are true and correct. The test to apply is whether or not the Plaint discloses any cause of action at all and nothing beyond it is required to be determined. No further enquiry as to whether a bogus, vexatious litigation has been initiated is essential at this stage. It is not competent for the Court to go into the correctness of the averments in the Plaint at the stage of adjudicating an application for rejection of Plaint.

34. Mr. Kanade has submitted that the Defendants have argued this Application under Order VII Rule 11 of C.P.C. not appreciating the parameters prescribed by the Supreme Court.

⁸ (2020) 7 SCC 366 [Paragraph 23]

35. Mr. Kanade has submitted that while adjudicating the dispute involved in the present matter seeking declaration and specific performance, consideration has to be given to (i) agreement between the parties; (ii) conduct of the Plaintiff; (iii) element of hardship that may be caused to one of the parties and availability of adequate relief; (iv) disclosure of cause of action; and (v) bar of limitation, if any. He has submitted that all the aforesaid factors have to be considered on the anvil of the Plaint as it stands and on the basis that the contents of the Plaint are correct.

36. Mr. Kanade has submitted that it is clear that the terms and conditions incorporated in the Draft Deed of Conveyance were initiated by the Defendants and it was incumbent upon the Plaintiff to either accept or refuse the same. He has submitted that since the Draft Deed of Conveyance was prepared by the Defendants, all the conditions and stipulations mentioned therein were acceptable to the Defendants.

37. Mr. Kanade has submitted that on a bare perusal of the contents of the said Draft Deed of Conveyance, and especially Clause 12 thereof, the Defendants intended to convey everything

except the portion of the property expressly mentioned therein which was to be retained by the Defendants. He has placed reliance upon Clause 12 of the Draft Deed of Conveyance and submitted that only the portion mentioned under the said Clause 12 was retained by the Defendants i.e., floor Nos. 1, 3 and 4, which were not to be transferred and only the premises on ground and 2nd floor were intended to be conveyed to the Plaintiff.

38. Mr. Kanade has submitted that out of the 5 floors of the said building, 2 floors were intended to be conveyed to the Plaintiff under the Draft Deed of Conveyance prepared by the Defendants. Therefore, it was the Defendants who agreed to convey to the Plaintiff 2/5th (40%) undivided share in the said property. He has submitted that this is the case pleaded in the Plaint and at an Order VII Rule 11 stage, the Defendant cannot challenge the correctness of the stand taken in the Plaint. He has submitted that in fact, Order VII Rule 11 requires that the same, viz. the pleading is taken to be correct.

39. Mr. Kanade has submitted that the blanks in the Draft Deed of Conveyance prepared by the Defendants were to be

filled by the Defendants only as those pertained to area measurements of the flats on 3rd and 4th floors which, in any event, were retained by the Defendants. He has submitted that only the Defendants who could have added these details, as they intended to retain those flats mentioned therein.

40. Mr. Kanade has submitted that the Plaintiff accepted the terms of the Draft Deed of Conveyance on an as is basis and on the perusal of the Plaint, particularly paragraph 27 at page 23, it can be seen that it is the case of the Plaintiff that INR 11,00,000/- as contemplated under the Draft Deed of Conveyance prepared by the Defendants was paid by the Plaintiff. To substantiate the same the Plaintiff has also relied upon letters dated 2nd August 2006 and 25th August 2006, both evidencing payment of INR 11,00,000/- to the Defendants. He has submitted that there exists a concluded agreement between the parties.

41. Mr. Kanade has submitted that the Plaintiff has filed the present Suit seeking declaration and specific performance of a Draft Deed of Conveyance which, being a draft deed, is not registered and the Plaintiff, in fact, vide the instant suit, is seeking

directions to be given to these Defendants to execute and register the said indenture.

42. Mr. Kanade has submitted that it is the case of the Defendants that since the said Draft Deed of Conveyance is not a registered document, the Plaintiff cannot seek reliefs as more particularly mentioned in the Plaint and especially a relief in terms of specific performance cannot be sought. He has placed reliance upon the judgment of the Supreme Court in **Kaladevi Vs. V.R. Somsundaram**⁹, which has been recently clarified in **Muruganandam Vs. Muniyandi (Died) through Lrs.**¹⁰ that an unregistered document may be received as evidence of contract in a Suit seeking specific performance.

43. Mr. Kanade has submitted that the Plaintiff's conduct displays "readiness and willingness". He has submitted that the Plaintiff has paid consideration under the Draft Deed of Conveyance and thereby altering its position in accordance with the terms and conditions as incorporated by the Defendants in the said

⁹ (2010) 5 SCC 401 [Paragraph 12]

¹⁰ 2025 SCC OnLine SC 1067 [Paragraph 10]

Draft. He has referred to the correspondence between the parties in this context.

44. Mr. Kanade has submitted that at the stage of deciding the Application under Order VII Rule 11 of the C.P.C., it would not be correct to conduct a mini trial, and it is significant that pleadings in the Plaint are considered to be true and correct.

45. Mr. Kanade has submitted that the Draft Deed of Conveyance, which was prepared and shared by the Defendants on 14th March 2003 was accepted and acted upon by the Plaintiff. He has submitted that for the first time, vide the Defendants' Advocate's letter dated 18th October 2022, the Defendants refused to perform the obligations cast upon them which constrained the Plaintiff to file the present suit.

46. Mr. Kanade has submitted that it is well settled that limitation is a mixed question of fact and law and thus, is a triable issue. He has submitted that according to Article 54 of the Limitation Act, period of limitation to institute a Suit for specific performance of a contract is three years and time from which such period begins to run is either (i) the date fixed for the performance;

or (ii) if no such date is fixed, when the Plaintiff has noticed that performance is refused. He has submitted that since there was no fixed timeline agreed for performance under the Draft Deed of Conveyance, the cause of action reckoned only when the Plaintiff received knowledge of refusal from the Defendants for the first time in the year 2022. He has submitted that it is fairly evident that the Suit is, therefore, filed within limitation (within three years of reckoning of cause of action).

47. Mr. Kanade has submitted that assuming but not admitting that the contents of the Plaint do not positively answer the question regarding limitation, limitation being a triable issue need not be ascertained without offering the parties to adduce evidence and a Plaint ought not to be rejected by the Court, if it is otherwise satisfied that the pleadings in the Plaint, on the face of it, do not make out a claim that is hopelessly barred by limitation.

48. Mr. Kanade has submitted that it is pertinent to note that in paragraph 50 of the Plaint, the Plaintiff has categorically pleaded that the Defendants have put the Plaintiff in possession of the flat on the ground floor of the front building pending execution

of conveyance; that the Plaintiff has paid the entire consideration; that the Defendants have by their conduct kept the said agreement alive.

49. Mr. Kanade has submitted that the Plaintiff upon altering its position as per the terms stipulated under the Draft Deed of Conveyance, has been paying money towards the property tax in respect of the property to the extent of 2/5th (40%) undivided share since the year 2007 and the same is evident from the debit notes issued by the Defendants dated 17th December 2007. Further, the Plaintiff has obtained vacant possession from the tenant, bore all the expenses of litigation filed by several third parties against the Defendants and constructed the 3rd and 4th floors of the said building. He has submitted that tremendous hardship will be caused to the Plaintiff in the event the relief under the said Suit is not granted, and more importantly, if the Plaint is rejected at the threshold, without providing adequate opportunity of hearing to the Plaintiff. He has submitted that it is a settled position that rejection of Plaint at the threshold entails very serious consequences. This power conferred upon the Court, therefore, must be used sparingly.

50. Mr. Kanade has submitted that the judgment relied upon by the Defendants, namely **Gurbachan Singh** (supra) and **Balram Singh** (supra) are both distinguishable and not applicable to the facts of the present case. Both those judgments were rendered after full-fledged trials were conducted and dispute had reached the Punjab and Haryana High Court and Supreme Court respectively. He has submitted that the judgments do not lay down any proposition of law as to how a Plaint is required to be considered on the anvil of Order VII Rule 11 of the CPC. In fact, the said judgments underscore the point that the Defendants are *inter alia* urging their case under Order VII Rule 11 of the CPC basis their defense in the written statement and not the Plaint as it stands.

51. Mr. Kanade has accordingly, submitted that the present Application filed under Order VII Rule 11 of the C.P.C. for rejection of Plaint ought to be dismissed.

52. Having considered the rival submissions, it would be necessary to consider whether the Plaintiff has a cause of action in the Plaint. The present Suit has been filed for specific performance of a Draft Deed of Conveyance as well as for declaration that the Draft

Deed of Conveyance is valid and for the Defendants to convey 2/5th (40%) undivided share, right, title and interest in the said property in favour of the Plaintiff. It is an admitted position that the Draft Deed of Conveyance has blanks which remained to be filled up. The blanks in the Draft Deed of Conveyance have sought to be explained away by the Plaintiff on the ground that the Draft Deed of Conveyance was prepared by the Defendants and all conditions and stipulations mentioned therein were acceptable to the Defendants. Further, that the Defendants intended to convey everything except the portion of the property expressly mentioned in the said Draft which was to be retained by the Defendants. In other words the only portion mentioned under the said Clause 12 of the Draft Deed of Conveyance was to be retained by the Defendants viz. floor Nos. 1, 3 and 4 and which were not to be transferred and only the premises on ground and 2nd floor were intended to be conveyed to the Plaintiff. It is the further contention of the Plaintiff that these Defendants were to convey 2/5th (40%) undivided share in the said property.

53. It is pertinent to note that the Plaintiff has in so contending overlooked the fact that the consideration under the Draft Deed of Conveyance was in three parts. Firstly, the Plaintiff was

required to pay an amount of INR 11,00,000/- to the Defendant on or before execution of the conveyance. Secondly, the Plaintiff was to transfer two apartments to the Defendants, on the 3rd and 4th floor of the front building, which areas remained to be filled up in the Draft Deed of Conveyance. Thirdly, the Third Schedule of the Draft Deed was intended to specify the facilities to be provided and which, was left blank and thus is incomplete. There was a plan of the property, which forms an essential part of any conveyance and which was not annexed to the Draft Deed. It is thus evident that the Draft Deed of Conveyance was neither executed nor finalised between the Parties. The material consideration forming the basis of the Draft Deed of Conveyance of the said property remained undefined and continues to remain undefined till date.

54. The Plaintiff claims a 2/5th (40%) undivided share in the said property. However, as aforementioned, the area of the two apartments which were to be transferred by the Plaintiff to the Defendants on the 3rd and 4th floor of the front building, have not been filled up. Hence, the share of the Plaintiff cannot be determined without the respective areas of the said property being ascertained. Thus, in absence of a complete Conveyance Deed having been

entered into between the parties, the claim for specific performance of the said Draft Deed of Conveyance cannot be granted.

55. Further, the claim of the Plaintiff of payment of INR 11,00,000/- towards consideration for Conveyance of the property is contrary to the correspondence on record. The Defendant No.1 has categorically stated in its letter dated 21st August, 2006 that the payment of INR 11,00,000/- by the Plaintiff was towards the amounts due to the Defendant No. 1 and not payment towards the conveyance. This is in response to the Plaintiff's letter dated 26th July 2006. This was accepted by the Plaintiff's Advocate vide their letters dated 25th August 2006 and 8th September 2006 by stating that they had no objection to the Defendant No. 1 encashing the said cheques towards its dues.

56. Further, under Section 54 of the Transfer of Property Act, 1882, there is a requirement of *consensus ad idem* between the Parties with respect to the fundamental terms of the sale. The definition of 'Sale' in the Transfer of Property Act is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In the present case, the consideration

was never paid by the Plaintiff to the Defendant under the Draft Deed of Conveyance and in the absence of finalised terms, including the total consideration payable under the Draft Deed of Conveyance, which as aforementioned apart from payment of INR 11,00,000/- comprised of transfer of two apartments to the Defendants i.e. on the 3rd and 4th floor of the front building by the Plaintiff as well as facilities to be provided by the Plaintiff there can be no sale effected and / or intended to be effected by the said Draft Deed of Conveyance.

57. Accordingly, I am of the considered view that the Draft Deed of Conveyance does not create any right, title, interest, or charge in favour of the Plaintiff and is wholly unenforceable in law. There being no contract for which specific performance can be granted under Section 10 of the Specific Relief Act, 1963. The contract is neither valid nor subsisting. Hence, the relief of specific performance is not maintainable. I find much merit in the submission of Defendants that the Draft Deed of Conveyance is at best, a tentative draft and does not confer any enforceable legal rights upon the Plaintiff.

58. The judgments relied upon by the Defendants in **Balram Singh** (supra) and **Gurbachan Singh** (supra) have been sought to be distinguished by the Plaintiff on the ground that they have been passed after full fledged trial. However, such distinction is of no relevance considering the law viz. the Indian Registration Act, 1908 which provides under Section 17(1A) read with Section 49 that an unregistered agreement does not confer any right on a party to seek a decree for specific performance.

59. The Plaintiff has relied upon the recent judgment of the Supreme Court in **Muruganandam** (supra). The Supreme Court has in the said judgment not expressed any view on the contents of the unregistered document, whilst allowing the document to be received in evidence as proof of an oral agreement for sale in respect of which specific performance had been sought. This is in accordance with the proviso to Section 49 of the Indian Registration Act, 1908. However, Section 49 of the Registration Act provides that an unregistered document which requires to be registered shall not affect any immovable property comprised therein. Thus, the judgment in **Muruganandam** (supra) does not support the Plaintiff.

60. I am of the considered view that the Plaintiff has failed to demonstrate a cause of action in the Plaint. Hence, the prayer with respect to specific performance of an unregistered and unexecuted Draft Deed of Conveyance cannot be granted. Further, the remaining prayer of declaration on its own is not maintainable. Thus, no purpose will be served by keeping the Suit alive and / or sending the Suit for trial. The basis for the finding on lack of cause of action is only on the Plaint and documents accompanying the Plaint and without conduct of a mini trial. Accordingly, the Plaint is required to be rejected on the ground of there being no cause of action. Having so held, the remaining ground for which the Defendants have sought for rejection of the Plaint, viz. the Suit being barred by law of limitation would not fall for consideration.

61. However, presuming there is a cause of action in the Plaint, the Plaint would still require to be rejected on the ground that the Suit is barred by limitation. This upon considering Article 54 of the Limitation Act, 1963, which is applicable. The Deed of Conveyance was to be executed conditional upon an Occupation Certificate being obtained within the time prescribed in the Agreement of Cancellation and Fresh Understanding i.e. by 11th

August 2003. This condition was never satisfied by the material date and hence, specific performance of the Draft Deed of Conveyance itself would be barred after a period of three years from 11th August, 2003 i.e. on 10th August, 2006.

62. Further, I also find merit in the submission on behalf of the Defendants that by the Defendants' Advocate's letter dated 17th August 2012 there had been non acceptance of the Draft Deed of Conveyance. In the said letter, it is stated that the Plaintiff was attempting to incorporate the terms of conveyance in the Draft Development Agreement, which was not acceptable. A plain reading of this would be that the Defendants had never accepted the Draft Deed of Conveyance and it was only the "Development Agreement", which the parties had contemplated entering into. Thus, even if there was no date fixed for specific performance of the Draft Deed of Conveyance, the Plaintiff had notice that the performance had been refused on 17th August 2012 and thus, the Plaintiff's right to sue for specific performance expired on 16th August 2015.

63. Accordingly, on both the grounds viz. the Plaintiff's failure to demonstrate a cause of action in the Plaint and the Suit

being barred by law of limitation, the Plaint is rejected under Order VII Rule 11 (a) and (d) of the C.P.C.

64. The above Interim Application is accordingly disposed of.

65. In view of the disposal of the Suit by rejection of the Plaint, all pending Interim Applications do not survive and are also disposed of.

[R.I. CHAGLA J.]