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

INTERIM APPLICATION NO.593 OF 2025
IN
COMMERCIAL SUIT NO.33 OF 2025

Hema Shantilal Bhagat and Anr. *...Applicants*

<u>In the matter between</u>
Tanuja Jayantilal Bhagat *...Plaintiff*

V/s.

U.H. Pandya and Associates and Ors. *...Defendants*

Ms. Priyanka Kothari *i/b. Ms. Dital R. Shah for Defendant Nos.1 & 2 and for the Applicant in IA/593/2025.*

Mr. Arshad Shaikh, *Senior Advocate with Mr. Ranjit Agashe, Ms. Vinsha Acharya, Mr. Rajendra Jain and Mr. Pranil Lahigade i/b. Mr. Devansh S. Malhotra for the Plaintiff.*

Mr. K.T. Kukreja *with Ms. Chandni Sabnani i/b. Mr. Arvind Manghiramalani for Defendant No.3.*

CORAM: SANDEEP V. MARNE, J.
DATED: 11 SEPTEMBER 2025.

<u>P.C.:</u>

1) Defendant Nos. 1 and 2 have filed Interim Application No.593 of 2025 seeking rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 **(the Code)**. Rejection of the Plaint is essentially sought on the ground that the Suit is barred by law as well as by limitation.

2) Plaintiff has filed the Suit seeking a declaration that she is partner of Defendant No.1 -Firm holding 80% share in the partnership Firm. According to the Plaintiff, Suresh Kalyanji Bhagat had 80% share in the partnership Firm. Defendant No.3 was the wife of Suresh K. Bhagat. Their marriage was dissolved by decree of divorce dated 5 July 2006. According to Plaintiff, partner- Suresh Bhagat was murdered by Defendant No.3 alongwith their son-Mr. Hitesh Bhagat on 13 June 2008. After demise of Suresh Bhagat, his mother -Maniben Kalyanji Bhagat filed Administrative Suit No.3197 of 2008 in this regard for administration of properties of late Suresh Bhagat. Maniben Bhagat expired on 19 September 2010 leaving behind her Will dated 14 October 2008 and Codicil dated 3 March 2010. Plaintiff claims to be the sole executrix of the Will of late Maniben Bhagat. Accordingly, Plaintiff preferred Testamentary Petition No.588 of 2011 in this Court seeking probate of the said Will and Codicil of Maniben. Plaintiff thereafter preferred Chamber Summons No. 1095 of 2011 in Testamentary Suit No.3197 of 2008, which was allowed, and Plaintiff was arrayed as Plaintiff in the said Suit No. 3197 of 2008. Defendant No.3 and her son-Hitesh Suresh Bhagat were convicted by the Sessions Court on 31 July 2013 for murder of Suresh K. Bhagat and according to the Plaintiff, they ceased to be the legal heirs and that therefore she alone is entitled to inherit estate of the deceased partner in her capacity as sole executrix of the Will executed by mother -Maniben K. Bhagat. Plaintiff has filed the present Suit seeking a declaration that she is a partner of first Defendant-Firm holding 80% share belonging to late Suresh Bhagat.

3) Defendant Nos.1 and 2 have filed Interim Application No.593 of 2025 seeking rejection of the Plaint under Order VII Rule 11 of

the Code contending that the Plaintiff has admitted accrual of cause of action on 13 June 2008 whereas Suit is filed on 22 October 2024 after 16 long years and the same is barred by limitation. Without prejudice, it is submitted that the Plaintiff has admitted accrual of cause of action in 2015 and that therefore the Suit is barred by limitation. Alternatively, it is submitted that if the Suit is held to be within limitation, same is otherwise not maintainable in view of the averments made in paragraph 16 of the Plaint wherein Plaintiff has pleaded that Defendant No.3 has ceased to be legal heir of deceased -Suresh Bhagat when in fact, appeal against conviction is pending and that therefore she could not ceased to be the legal heir of deceased- Suresh Bhagat. It is further submitted that Testamentary Suit No.3197 of 2008 is pending before this Court, in which authenticity of the Will left by Maniben Bhagat is yet to be determined and that therefore till determination of Plaintiff's right under the will, she has no locus to file the present Suit. Referring to the order passed by the Supreme Court in Special Leave to Appeal (C) No.4152 of 2019 on 25 February 2019 it is submitted that Suit No.3197 of 2008 and Testamentary Suit No.100 of 2011 cannot be decided before the decision of Criminal Appeal and that therefore, Plaintiff cannot seek declaration that she is entitled to 80% share in first Defendant -Firm. On above broad grounds, rejection of the Plaint under Order VII Rule 11 of the Code is sought.

4) Ms. Kothari, the learned counsel appearing for the Applicants in the Interim Application, who are Defendant Nos.1 and 2 in the Suit, would submit that the Suit is hopelessly barred by limitation and that therefore the Plaint deserves to be rejected under Order VII Rule 11 of the Code. She would take me through the averments in the Plaint to demonstrate that the cause of action according to the Plaintiff has arisen

on either of the following three dates viz., (i) 13 June 2008, when late Suresh Bhagat was murdered and Plaintiff's right under Clause 11 of the Partnership Deed got created, (ii) 4 February 2013, when Plaintiff addressed letter to Defendant No.2 asserting her share in the partnership Firm and (iii) year 2015 when Writ Petition No.7211 of 2015 filed by a tenant in suit property. Suit filed in 2024 is thus grossly time barred. She would rely upon judgment of the Apex Court in ***Shri Mukund Bhavan Trust and Others V/s. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another***[1] in support of her contention that a Suit, which is grossly time barred needs to be nipped in the bud instead of forcing the Defendants to undergo the ordeal of lengthy trial. She would submit that when mother -Maniben Bhagat was alive, she did not assert any right in partnership Firm in respect of share of late Suresh Bhagat and that it is too far-fetched for Plaintiff to claim a share in the partnership based on Maniben's Will. That Plaintiff's claim to the estate of Maniben and of Suresh is yet to be crystalised and that therefore there is no cause of action for filing the Suit. On above broad submissions she would pray for rejection of the Plaint. Ms. Kothari would however not press the objection of non-maintainability of the Suit in the light of pendency of Testamentary Suit No.100 of 2011 and administrative Suit No.3197 of 2018.

5) Mr. Kukreja, the learned counsel appearing for Defendant No.3 would support the application filed by Defendant Nos. 1 and 2 and adopt the submissions of Ms. Kothari.

1 2024 SCC OnLine SC 3844

6) The application is opposed by Mr. Shaikh, the learned Senior Advocate appearing for the original Plaintiff. He would submit that the Suit is not barred by limitation. That Plaintiff was justified in not filing the Suit immediately after 2013 as Defendant No.3 kept on staking claim in the estate of late Suresh Bhagat before this Court and before the Apex Court. He would rely upon reply given by Defendant No.2 to Plaintiff's notice dated 11 September 2023 referring to the order of the Supreme Court and contending that in respect of late Suresh Bhagat's share in the partnership firm, the entitlement of Defendant No.3 in the estate of Suresh Bhagat is yet to be decided. Defendant Nos.1 and 2 therefore cannot raise the issue of limitation contrary to the stand taken in the said reply. He would therefore pray for rejection of the application.

7) I have considered the submissions canvassed by the learned counsel appearing for the rival parties. Rejection of the Plaint under Order VII Rule 11 of the Code is sought essentially on the ground of Suit being barred by limitation. Before proceeding to deal with argument of limitation, it must be observed that ordinarily limitation is a mixed question of law and fact, and determination of same many times require leading of evidence. In ordinary course therefore, rejection of the Plaint on the ground of limitation under Order VII Rule 11 (d) of the Code is not warranted, when limitation is mixed question of law and fact. (**SEE: P. Kumarakurubaran Vs. P. Narayanan**[2]) However, there is an exception to the well recognised principle when it appears to the Court from averments in the Plaint that Suit is hopelessly barred by limitation. In such case Court can have recourse to provisions under Order VII Rule 11 (d) of the Code for nipping in the bud baseless litigation at the threshold rather than subjecting Defendants to the ordeal of lengthy trial. In ***Shri***

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2 2025 SCCOnline SC 975

Mukund Bhavan Trust (supra) Supreme Court held in paragraph 26 as under:-

> 26. At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief and drive the parties back to the trial Court. We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the appellants under Order VII Rule 11(d) of CPC. The High Court also erred in affirming the same, keeping the question of limitation open to be considered by the trial Court after considering the evidence along with other issues, without deciding the core issue on the basis of the averments made by the Respondent No. 1 in the Plaint as mandated by Order VII Rule 11(d) of CPC. The spirit and intention of Order VII Rule 11(d) of CPC is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The Courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold.

8) Keeping in mind the above principle where the Court can reject the Plaint under Order VII Rule 11(d) of the Code when the Suit is found hopelessly barred by limitation from bare averments in the Plaint, I proceed to examine whether the Defendant Nos.1 and 2 are successful in establishing at this juncture that the Suit is so hopelessly barred by limitation that the same need not be sent for trial.

9) Plaintiff has claimed 80% share in first Defendant partnership Firm, which according to the Plaintiff belong to the partner-late Suresh K. Bhagat. Plaintiff relies on clause 11 of the partnership

Deed dated 3 January 1995 which provides *inter alia* that in case of death of a partner, one of his /her legal heirs shall be admitted into partnership at the same sharing ratio. Clause 11 of the Partnership Deed reads thus:-

> 10) **DEATH, RETIREMENT ETC:** That death, retirement, resignation or insolvency of any partner shall not by itself constitute dissolution of the firm and the surviving or the remaining partners shall be free to carry on the said business upon such terms and conditions as be mutually agreed upon. It is hereby agreed that in case of death of a partner, one of his/her legal heirs shall be admitted into the partnership, at the same sharing ratio.

11) The partner- late Suresh Bhagat has passed away on 13 June 2008. According to the Plaintiff he was murdered by his divorced wife (Defendant No.3) and son-Hitesh. Defendant No.3 and son-Hitesh have been convicted by the Sessions Court for having committed murder of partner Suresh Bhagat on 31 July 2013. The order of conviction is challenged in appeal. In the meantime, son- Hitesh Suresh Bhagat has passed away. Plaintiff contends that on account of conviction of Defendant No.3 for murder of partner-Suresh K. Bhagat she has lost right to inherit his estate. According to Plaintiff Suresh's mother -Maniben has inherited entire share of Suresh and by virtue of the Will and the Codicil executed by Maniben, Suresh's share in the Partnership Deed has devolved on the Plaintiff. This is how Plaintiff has filed a Suit claiming 80% share in the first Defendant- Partnership Firm.

12) According to Defendant Nos.1 and 2 cause of action for claim of 80% share in the first Defendant-Partnership Firm arose in favour of Plaintiff on 13 June 2008. I am unable to agree. Plaintiff's case is that after death of Suresh, his mother-Maniben inherited his share in the Partnership Firm. Mother-Maniben has passed away on 19 September 2010 and therefore cause of action for the Plaintiff to file the Suit cannot

be said to have arisen on 13 June 2008. Also, Plaintiff's case is premised on loss of right of inheritance by the wife on account of her conviction on 31 July 2013. Therefore, the cause could not arise on 13 June 2008.

13) Defendant Nos.1 and 2 have pleaded alternate case of accrual of cause of action to the Plaintiff on 4 February 2013, when Plaintiff allegedly wrote letter to Defendant No.2 cautioning her not to deal with properties of the first Defendant-firm. True it is that the cause of action for claiming share in the partnership firm for the Plaintiff can be said to have arisen on 4 February 2013, but it is Plaintiff's case that the same continued to arise thereafter as well. According to the Plaintiff, the cause of action continued and finally arose on 30 September 2023 when advocate of Defendant No. 2 posted reply to Plaintiff's notice dated 11 September 2023. In paragraphs 1 and 2 of the said reply, Advocate for Defendant Nos.1 and 2 has stated as under:

1. My client has put in my hand your above referred notice. By the said Notice you have called upon my client to declare your client as a designated partner for 80% of the M/s. U.H. Pandy and Associates and further compelling her to execute reconstituted partnership. Without admitting to the claim made by your client and denying all false allegations leveled against my client, my client has instructed me to draw your attention to the Order dated 25.2.2019 passed by Hon'ble Supreme Court of India in Petition for Special Leave to Appeal C 4152/2019 wherein the Hon'ble Supreme Court was kind enough to direct that "*proceedings pending between the parties in the form of Suit No.3197 of 2008 and Testamentary Suit No.100 of 2011 in the High Court ought to proceed only after a final decision is rendered in the stated criminal appeal.*"

2. **In view of the Order of the Hon'ble Supreme Court it is incorrect for your client to assert any right in the M/s. U.H. Pandy and Associates. Further my client has instructed me not to give paragraph-wise reply to your notice as the same has no meaning due to pending litigations between the legal heirs of the deceased-Suresh Bhagat.** My client denies all false allegations made against her as the same are made without any proof and further call upon you to withdraw allegations made in paragraph No.7 of your

> notice, failing which my client shall be constrained to initiate appropriate legal actions both civil and criminal against your client at her risk as to cost and consequences which please note.
>
> (emphasis added)

14) Perusal of response given by Defendant No.2 to Plaintiff's letter dated 11 September 2023 would indicate that Defendant No.2 did not raise the defence of limitation. On the contrary, Defendant No.2 referred to Order dated 25 February 2019 passed by the Hon'ble Supreme Court and contended that in view of the said order, Plaintiff cannot assert any right in first Defendant – partnership firm as Plaintiff's claim in Suit No.3197 of 2008 and Testamentary Suit No.100 of 2011 would only be determined after decision of Criminal Appeal filed by Defendant No.3. In other words, what is contended by Defendant No.2 in the said response is that Plaintiff needs to first establish her right to succeed to the estate of Maniben in the said two Suits and only thereafter, action for claiming share in partnership firm would arise. There is thus implied admission on the part of Defendant No.2 that the cause for claiming share in the partnership firm had not even arisen. Thus far from raising the objection of limitation, Defendant No. 2 contended that the claim of the Plaintiff is premature. Immediately after the correspondence in the year 2023, Plaintiff had earlier instituted a Suit in the year 2024 in which order 17 April 2024 was passed referring the parties to mediation. After the mediation failed, present suit is filed.

15) Even pleadings in Interim Application No.593 of 2025 suggest that Defendant Nos.1 and 2 have pleaded alternate case that Plaintiff cannot stake claim to the share of late Suresh Bhagat in the Partnership Firm till two pending Suits filed by her are adjudicated. In this regard, it would be apposite to reproduce contents of paragraph 9 of the Plaint, which reads thus:

> 9. Without prejudice to the above submission, the Applicant further states that in paragraph No.21, the Plaintiff asserts that the Hon'ble Supreme Court has in SLP [C] No.4152 of 2019 vide its Order dated 25.2.2019 was pleased to direct that this Hon'ble Court would first assign the early date of hearing of Criminal Appeal No.968 of 2013 and post final adjudication the Hon'ble Bombay High Court would be directed to proceed with Suit No.3197 of 2008 and Testamentary Suit No.100 of 2011. **Thus, as on date from the own admission of the Plaintiff the status of the Defendant No.3 as legal heir is not decided. In such circumstances, the Plaintiff cannot seek a declaration that she is entitled to 80% share in the Defendant No.1 firm without adding other legal heirs of the deceased Suresh Bhagat as party to the present proceedings who are necessary parties.** The Applicant states that the above submission shall not amount to any admission that the present suit is not barred by law of limitation and/or that the Plaintiff has any locus to file the present suit or that the suit property forms part of the deceased estate.
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> (emphasis added)

Though the emphasized statement above is qualified by stating that the same shall not be treated as an admission of suit being in limitation, there is no such caveat in the reply dated 30 September 2023.

16) In my view therefore, it is difficult to arrive at a conclusive finding at this stage that Suit is so hopelessly barred by limitation that the Plaint therein must be rejected having recourse to Order VII Rule 11(d) of the Code. In fact, if Defendant No.3 succeeds in her appeal, there might be change in the percentage of share. Plaintiff's claim to 80% share in the assets of first Defendant -Partnership Firm is premised on denial of any share to Defendant No.3 on account of her conviction. Plaintiff claims that she could not institute suit earlier on account of pending litigations relating to Will, which have now been stayed till decision of the criminal appeal. Even Defendant No.2 possibly believes in this proposition as is apparent from response given by her in the year 2023.

17) Considering the above position, I am unable to hold at this stage of the proceedings that the Suit is hopelessly barred by limitation. The issue of limitation needs to be decided at an appropriate stage at the end of the trial of the Suit and all contentions of the parties in that regard are expressly kept open. Noting observed in the order shall be construed to mean that this Court has held the suit to be in limitation.

18) In my view therefore, no case is made out for rejection of the Plaint by having recourse to provisions of Order VII Rule 11(d) of the Code.

19) Interim Application is accordingly **rejected.**

[SANDEEP V. MARNE, J.]