



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO.1 OF 2025

1. Rikhab Kantilal Mutha
Age 50 years, Occ: Business
... Defendant no.4
2. Amit Kantilal Mutha
Age 45 years, Occ: Business,
Both R/o Bhagat Singh Ward
Pandharkawada, Kelapur,
Yavatmal, Maharashtra.
...Defendant No.5
...**APPLICANTS**

VERSUS

1. Bhaurao Tukaram Ambatkar
Age 78 years, Occ: Nil
R/o Karanji, Kelapur,
Yavatmal, Maharashtra.
... Plaintiff No.1
2. ~~Subhas Kailaschandra Chandak~~
~~(Maheshwari)~~
~~Age 61 years, Occ: Farming,~~
... Defendant No.1
3. ~~Savitridevi Kailaschandra Chandak~~
~~(Maheshwari)~~
~~Age 92 years, Occ: Nil.~~
4. ~~Sucheta Kailaschandra Chandak~~
~~(Maheshwari)~~
~~Age 50 years, Occ: Farming~~
~~Respondent Nos.2,3,4 are resident of~~
~~Agra, 165, North Vijay Nagar,~~
~~Daresi No.2, Agra, U.P.~~
... Defendant No.3
(As per order dated
18.02.2025, Respondent
Nos.2 to 4 are deleted)
...**RESPONDENTS**

Shri S.M. Lodha, Advocate for applicants.
Shri H.V. Thakur, Advocate for respondent no.1.

CORAM:- M.W. CHANDWANI, J.
DATE :- 22nd AUGUST, 2025

ORAL JUDGMENT:

1. Heard. Admit. With the consent of both parties, the matter was taken up for final hearing.

2. The applicants have filed this application against the rejection of their application under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint on the ground of law of limitation.

3. The suit has been filed by respondent no.1/original plaintiff in the year 2011. The issues are already framed. The evidence of the plaintiff's side has been recorded. Even defendant no.4 has already filed affidavit of evidence and it is at the stage of cross-examination of defendant no.4.

4. The Supreme Court in the case of ***M/s. Bhagya Estate Ventures Pvt. Ltd. Vs. Narne Estates Pvt. Ltd. & Anr.***¹ in para 15 has observed as under:

“15. It is already a clarified position of law that without disposing of an application under Order VII Rule 11, CPC, the court cannot proceed with the trial. When this is the position of law and the purpose of the provision is also settled, then, we see no reason for the right of the defendant to raise such a plea at a far belated stage such as final arguments or nearing conclusion of the trial. Allowing

1 Civil Appeal No.4570/2023 dated 11.09.2024

such pleas to be raised after the trial has proceeded so far would not only defeat the intent of the provision but would also go against the principle of equity and would lead to wastage of the court resources. Additionally, allowing such rights to survive till eternity only act as a catalyst for the defendant to misuse the provision to prolong or delay the trial and abuse the process of law.”

5. In the matter before the trial Court, the plaintiff has already closed his evidence. Evidence of defendant no.4 has already been filed on record and the matter before the trial Court is at the stage of cross-examination of defendant no.4. Thus, the matter has been substantially heard and it may be disposed of soon. Therefore, the application filed by the applicant at a belated stage not only defeats the purpose of the provisions but it will also go against the principle of equity as observed by the Supreme Court in the matter referred above. Even otherwise, the question of limitation is a mixed question of law and fact which has been rightly observed by the learned trial Court. Apart from specific performance of contract, there are other prayers of injunction asking to restrain the applicant from disturbing the peaceful possession of the respondent.

6. The decision of the two-judges Bench relied upon by the learned counsel for the applicants stating that the plea of rejection of plaint can be taken at any stage of the suit in the case

of *Saleem Bhai and others Vs. State of Maharashtra and others* ¹ has been considered by a three-judges Bench of the Supreme Court in *M/s Bhagya Estate* (supra) and opined that the plea of rejection of plaint cannot be taken at a belated stage. Considering the facts of the present case, the decision of *M/s. Bhagya Estate* (supra) will be applicable.

7. At this stage, even if it is held that the suit for specific performance of contract filed by the applicant is barred by limitation, other prayers will still have to be adjudicated since, the plaint cannot be rejected in part (See: *Madhav Prasad Aggarwal and Anr. v. Axis Bank Ltd. and Anr.* ²). Therefore, there is no substance in the argument of the learned counsel for the applicants.

8. No interference is required in the findings of the trial Court. Hence, the application is rejected.

JUDGE

Wagh

¹ (2003) 1 SCC 557 : 2002 SCC OnLine 1232
² (2019) 7 SCC 138