



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

CIVIL REVISION APPLICATION NO.14 OF 2024

1. Pradip S/o Ravindrakumar Bajaj,  
Aged about 48 years, Occ:- Business

**APPLICANTS:-**

**[Org. Defts.]**

On R.A.

- 2 Smt. Shashikala Wd/o Ravindrakumar  
Bajaj,  
aged about 72 years, Occ: -  
Housewife, both residents of Dr.  
Ambedkar Road, Near Ganesh Talkies,  
Wardha, Tahsil and District Wardha.

**-Versus-**

Jeevan S/o Marotrao Durge,  
Aged about, 70 years, Occ:- Legal  
Practitioner, R/o Krishna Nagar,  
Bachelor Road, Wardha, Tahsil and  
District, Wardha.

**NON-**

**APPLICANT:**

**[Org. Plff.]**

**On R.A.**

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Mr. Abhijit Deshpande, counsel for Applicant.  
Mr. M.P.Dhruv, counsel for Non-Applicant.

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**CORAM :MRS. VRUSHALI V. JOSHI, J.**

**Judgment reserved on : 18.07.2025**

**Judgment pronounced on : 05.08.2025**

**JUDGMENT:-**

- 1) Heard.
- 2) **Rule.** Rule made returnable forthwith. This Civil Revision Application is heard finally with the consent of the learned counsel appearing for the parties.
- 3) By way of the present Civil Revision Application, the

applicants-original defendants are seeking to challenge the order passed below Exh.10 by 3<sup>rd</sup> Joint Civil Judge, Senior Division, Wardha, on 25.08.2023 in Regular Civil Suit No.197/2022. The non-applicant-original plaintiff prayed for specific performance of contract. The applicant has filed the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, which was rejected.

4) The non-applicant- original plaintiff on 20.07.2022, filed a suit, i.e., Regular Civil Suit No.197/2022, for specific performance of contract viz., an agreement of sale alleged to have been executed on 17.01.1980 in favour of the deceased father of the non-applicant/plaintiff by the predecessor of the title of applicants/defendants in respect of a suit plot admeasuring 4900 sq.ft. situated at Wardha, for total consideration of Rs. 24,500/- (Rupees Twenty Four Thousand Five Hundred only) as per the applicants/defendants, mentioned in paragraph nos. 3, 4 and 5 of the plaint. It is alleged by the applicants that the suit in question is barred by law of limitation as provided under Article 54 of the Limitation Act, 1963.

5) The main grounds for challenge are as under:

(a) That, the suit in question seeking specific performance of contract dated 17.01.1980 [the date of conclusion of contract being 02.11.1981] is hopelessly time-barred and mere issuance of notice by

the non-applicant/plaintiff on 15.06.2022 would neither extend nor save the limitation to file a suit for specific performance of contract as provided under Article 54 of the Limitation Act, 1963.

(b) The non-applicant/plaintiff seeks specific performance of an agreement of sale dated 17.01.1980 by filing a suit on 20.07.2022 and as such the plaint in the suit is liable to be rejected at the threshold being barred by limitation of three years as prescribed by Article 54 of the Limitation Act, 1963.

6) It is specifically submitted by the learned counsel on behalf of the applicants-defendants, Mr. Deshpande, that from the statements made in paragraph no.19 and the chain of events mentioned therein, depict that the suit property was mutated in the name of applicants-defendants way back on 15.07.2014 after the litigation, as regards renewal of lease rights was settled on 12.09.2011.

7) The learned counsel appearing for the non-applicant-plaintiff, Mr. Dhruv strongly opposed the arguments made on behalf of the applicants-defendants. He contended that the point of limitation is a mixed question of law and facts and needs to be decided on adducing evidence. On this point, he has relied on the following judgements:-

**(1) *Popat and Kotecha Property vs. State Bank Of India Staff Association (2005) 7 Supreme Court Cases 510***, wherein the Hon'ble Supreme Court held that:

***‘Clause (d) of Order 7 Rule 11 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 of CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force’.***

**(2) *Shakti Bhog Food Industries Limited Vs Central Bank Of India and another cited in (2020)***. Court Cases 260 wherein the Hon'ble Supreme Court held that :-

**“Whether suit barred by law of limitation, it is mixed question of facts and law”.**

8) The non applicant, who is the plaintiff has filed Civil Suit for specific performance under Section 19 of Specific Relief Act. The plaintiff has claimed the Specific performance on the basis of *Isarchitthi*, which was executed by the grandfather of the defendant No.1 in favour of the father of the plaintiff. In the year 1979 the amount was paid by the father of the plaintiff. It was agreed to sell the plot @ 5 rupees per sq.ft. for total amount of Rs.24,500/-. Father of plaintiff has paid Rs.8167/-. The *Isarchitthi* was executed by

Satyanarayan Bajaj in favour of father of plaintiff. In the year 1994, the will deed was executed. In the year 1987, the probate of the will deed was received and since 1984 to 2011, the proceeding for extension of lease was pending. In the year 2011 it was extended and the entries were recorded in revenue record. On 15.07.2014 the entries were mutated in revenue record and said entry was reaffirmed on 23.06.2015. The dates and cause of action arose from time to time is given by the plaintiff. He has issued notice for specific performance on 15.06.2022 and it was refused by the defendant on 17.06.2022. Hence, according to the plaintiff, the suit is within limitation.

9) It is the contention of plaintiff that, Clause 54 of the Limitation Act, 1963 provides limitation for Specific Performance of Contract. It starts from the date fixed for the performance, if no such date is fixed, then it starts when the plaintiff has noticed that performance is refused. On perusal of plaint, which is the requirement of Order VII Rule 11 to consider the contents of the plaint, it appears that till 2022 the plaintiff has not requested to the defendant for execution of sale deed. Though a number of dates for cause of actions are mentioned by the plaintiff, cannot be considered for specific performance of execution of sale deed. Specific performance can be made on execution of the sale deed on the basis of *Isarchitthi*, which was executed in the year 1987. The other dates, which are mentioned

are not relevant for specific performance. The specific performance is required to be claimed within a period of three years. The specific date is not mentioned in *Isarchitthi*, the name of the plaintiff is mutated in revenue records and he is in possession of the suit property. At the belated stage, on the basis of *Isarchitthi* the specific performance cannot be claimed.

10) The learned counsel for the applicant has relied on the judgment of the Hon'ble Apex Court in the case of *Mukund Bhavan Trust and ors. Vs. Shrimant Chhatrapati Udayan Raje Pratapsingh Maharaj Bhonsle and anr.* reported in 2024 SCC OnLine SC 3844.

*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”*

11) It is also observed by Hon’ble Apex Court in the case of *T.Arvanandam V.T.V.Satyapal reported in (1977)4 SCC 467* in paragraph No.18 as under:-

*“18. Continuing further with the plea of limitation, the Courts below have held that the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order VII Rule 11. In the present case, we have already held that 02.03.2007 is a fictional date. It is not a case where a fraudulent document was created by the appellant or his predecessors. The title of the suit property as observed by us earlier was conveyed in 1938 and 1952, and what transpired later by way of compromise was only an affirmative assertion by the State. While so, the prayer (a) made in the suit relates to declaration to the effect that the*

***Respondent No. 1 is the owner of the suit properties”***

12) The Limitation Act, 1963 prescribes the time limit for the institution of suits, appeals and applications. Section 2(j) of the said Act defines the expression, ‘the period of limitation’, to mean the period of limitation prescribed in schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific Article, then it would fall within Residuary Article. It has also observed by this Court in the case of ***Vinayak Shankar Bawane and ors. Vrs. Tilakraj Indrajeet Chaddha reported in 2020(3) ALL MR 1*** in paragraph No.20 as under:-

***20. Therefore, in the facts and circumstances of this case, it becomes clear that the Court below committed an error in refusing to accept the contentions raised on behalf of the revision applicants and rejecting the application filed under Order 7 Rule 11(d) of the CPC. The Court below erroneously held that since time was not the essence of the contract, the issue of limitation would necessarily be a mixed question of fact and law, to be determined upon trial. A perusal of the plaint in the present case and the clauses of the agreement dated 25/12/2007, which was placed on record along with plaint, shows that on the basis of such pleadings and material on record, the suit was barred by limitation on the face of it and the application filed by the revision applicants deserved to be granted”.***

13) Considering the above said observations made by this Court and the Hon'ble Apex Court and the law laid down by the Hon'ble Apex Court, the cause of action on the basis of *Isarchithhi* expired after three years of its execution. The suit is barred by limitation. The plaint is liable to be rejected at the threshold. Hence, I pass the following order.

14) The Civil Revision Application is allowed. The order passed below Exh.10 by 3<sup>rd</sup> Joint Civil Judge, Senior Division, Wardha, on 25.08.2023 in Regular Civil Suit No.197/2022 is hereby quashed and set aside.

**(MRS.VRUSHALI V. JOSHI, J)**