Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Md. Shabbar Rashidi

FAT 357 of 2026
with
CAN 1 of 2026

Tasmina Begum
Vs.
Abdul Karim Mallick and Ors.

For the appellant	:	Mr. Kushal Chatterjee, Mr. Subhasish Mitra, Mr. Shibjit Mitra, Advs.
For the respondents	:	Mr. Abhisekh Halder, Mr. Maidul Islam Kayal, Mr. Archisman Singh, Mr. Noorul Amin Sardar, Mr. Mohinur Mallick, Mr. Abir Mondal, Advs.
Heard on	:	November 13, 2026.
Judgment on	:	November 13, 2026.

Sabyasachi Bhattacharyya, J.:

1. Affidavit of service filed today be kept on record.

2. The present appeal has been preferred against a deemed decree rejecting the plaint in a suit filed by the plaintiff/appellant for specific performance of a contract dated December 15, 2022 whereby the predecessor-in-interest of the defendants/respondents agreed to transfer a property belonging to the said predecessor in favour of the plaintiff/appellant by execution of a registered sale deed, subject to the plaintiff making payment of the balance unpaid amount of consideration within six months from the execution of the agreement.

3. Learned counsel for the appellant argues that the learned Trial Judge rejected the plaint at the outset, primarily on the premise that it was time-barred. However, it is submitted that under normal circumstances, the question of limitation is a mixed question of fact and law and cannot be decided at the stage of Order VII Rule 11 of the Code of Civil Procedure.

4. Learned counsel places reliance on the relevant clause of the agreement-in-question which stipulates that the time limit fixed for tendering the balance amount by the plaintiff/appellant, as per the said agreement, was six months from the date of the agreement. However, it is submitted that there was no time limit stipulated for

execution of the sale deed by the proposed vendor after the tendering of such amount. Thus, the learned Trial Judge, it is argued, proceeded on a fundamental misconception of law and fact in holding that the limitation period for filing the suit commenced with the expiry of six months from the date of the agreement.

5. Learned counsel appearing for the appellant takes the court through several paragraphs of the plaint where it has been categorically pleaded that after the execution of the agreement and within a reasonable time therefrom, the plaintiff repeatedly requested Late Abdul Rahim Mallick, the proposed vendor and predecessor-in-interest of the present respondents, to execute and register a formal deed of sale in respect of the suit property and that on every such occasion, the plaintiff/appellant unequivocally expressed his readiness and willingness to pay the balance consideration and to complete the transaction at his own cost and expenses.

6. It has further been averred in the plaint that upon such requests, the predecessor-in-interest of the present respondents requested the plaintiff/appellant to grant him some more time for completion of the transaction without, however, ever denying the existence of the

agreement or disputing the receipt of the consideration already paid by the plaintiff and/or refusing to perform his part of the contract.

7. Thus, it is submitted that on a plain reading of the plaint, it would be evident that the limitation period never started during the lifetime of the original proposed vendor Late Abdul Rahim Mallick, since he never refused to perform his part of the agreement but only went on postponing such performance.

8. As per the plaint case, it is submitted, upon the demise of the said Abdul Rahim Mallick on September 27, 2025, the trouble started. After such demise, as per the plaint case, there was persistent obstruction by the defendants in the plaintiff's lawful use and access of the passage leading to the suit property, leading to the plaintiff/appellant filing a writ petition bearing WPA 12349 of 2026.

9. As per the plaint case, particularly in paragraph no. 23 thereof, finding no other alternative, the plaintiff caused a legal notice dated June 19, 2026 to be issued, in reply to which, as per paragraph 24 of the plaint, the defendants/respondents wrongfully denied and disputed the plaintiff's lawful claim under the agreement for sale and refused to execute and register any deed of sale in respect of

the suit property in terms of the agreement. Thus, the plaintiff was constrained to institute the suit in the year 2026.

10. As such, from the plaint case, it is argued, it would be evident that the suit was filed well within limitation.

11. Furthermore, regarding the question of whether time was the essence of contract, it is argued that the said issue could at best be adjudicated upon a full-fledged trial on evidence, and not conclusively decided at the premature stage of adjudication of an application under Order VII Rule 11 of the Code of Civil Procedure.

12. In support of his contention, learned counsel for the appellant cites *Ahmadsahab Abdul Mulla (2) (Dead) By Proposed LRS. vs. Bibijan & Ors.*, reported at *(2009) 5 SCC 462*, where it was held by the Hon'ble Supreme Court that the expression "date fixed for the performance", as appearing in Article 54 of the Schedule to the Limitation Act, is a crystallised notion and is a fixed date. It was further held by the Hon'ble Supreme Court that the date on which the plaintiff has notice that the performance is refused, pertaining to the second limb of Article 54, is also a specific date.

13. Learned counsel appearing for the defendants/respondents argues that there is no specific date of first refusal mentioned throughout the plaint. Thus, it is submitted that the learned Trial

Judge was justified in construing that the limitation period commenced from the expiry of six months, which is the time stipulated in the agreement for making the payment of the balance consideration by the plaintiff.

14. It is contended by learned counsel for the respondents, by placing reliance on *N Asha Devi vs. R Aravind Kumar and Anr.*, reported at *2026 SCC OnLine SC 1718*, that if it is obvious from the pleadings that the suit is barred by law (limitation, in the said case), the court is well within its powers to reject the plaint under Order VII Rule 11 of the Code at the outset, without waiting for a trial.

15. Learned counsel next contends, by placing reliance on certain paragraphs of the plaint, that the plaintiff herself has alleged that she filed a writ petition prior to filing of the suit. Thus, the cause of action crystallized much prior to the filing of the suit but the suit was filed belatedly.

16. It is further argued that from the four corners of the plaint, it would not be found that any specific date has been enumerated when there was a refusal on the part of the defendants to honour the agreement.

17. By placing reliance on paragraph no. 11 of the plaint, learned counsel argues that even as per the said paragraph, the plaintiff

had repeatedly approached the predecessor-in-interest of the present respondents for performance of the contract but such requests were not honoured. Thus, it is submitted that it has to be construed that the refusal to perform the agreement commenced since then. Since no specific date has been specified in that regard, it is argued that the court was justified in rejecting the plaint on the ground of limitation.

18. Upon considering the arguments of the parties and the averments in the plaint, however, we are unable to agree with the contentions of the defendants/respondents.

19. Throughout the plaint, it is the consistent case of the plaintiff/appellant that after the execution of the agreement dated December 15, 2022, the plaintiff repeatedly requested the original signatory, that is, the predecessor-in-interest of the present respondents Late Abdul Rahim Mallick, to execute and register a formal deed of sale in respect of the suit property.

20. As per paragraph no. 12 of the plaint, the said predecessor requested the plaintiff to grant him some more time for completion of the transaction, thereby tacitly conceding to the existence of the agreement and his liability to perform the same. In the self-same paragraph, it has also been averred that the said predecessor-in-

interest never denied the existence of the agreement or disputed the receipt of the consideration already paid by the plaintiff and, more significantly, never refused to complete the transaction.

21. Such tenor of the pleadings continues till paragraph no. 17 of the plaint, where it has been averred that the demise of Late Abdul Rahim Mallick took place on September 27, 2025.

22. In the previous paragraph nos. 14 to 16, it is pleaded that upon acceptance of substantial consideration from the plaintiff, Late Abdul Rahim Mallick expressly permitted the plaintiff to use the suit property as a passage and that after construction of residential building, the plaintiff continuously used such passage and on numerous occasions, again requested Late Abdul Rahim Mallick to execute and register a formal conveyance, upon which the latter acknowledged the transaction and at no point of time disputed the agreement.

23. Only after such demise of the original proposed vendor on September 27, 2025, as per the plaint case, friction arose between his heirs and the present appellant.This led, according to paragraph no. 21 of the plaint, to the plaintiff filing a writ petition before this court in the year 2026.

24. It will be evident from paragraph no. 23 of the plaint that the plaintiff allegedly caused a legal notice dated June 19, 2026 to be issued through his learned advocate, calling upon the defendants to execute and register a deed of sale, upon which a reply was sent on July 13, 2026, as per paragraph no. 24 of the plaint, whereby the defendants/respondents for the first time clearly refused to honour the said agreement or to specifically perform the same.

25. Thus, from a plain and meaningful reading of all the paragraphs of the plaint, there cannot be any manner of doubt that going by the said averments, the cause of action arose for the first time for filing of the suit only on July 13, 2026, when the defendants/respondents refused to perform their part of the agreement for the first time. At the worst, it at least has to be construed as per the plaint pleadings that before the expiry of Late Abdul Rahim Mallick on September 27, 2025, there was absolutely no denial on his part to perform the agreement. Even so construed, the suit, being filed in the year 2026, was well within the limitation period.

26. The other facet of the matter is whether the learned Trial Judge was justified in construing the expiry of six months after the execution of the agreement to be the starting point of limitation. On a plain reading of the agreement, however, it is crystal clear that the

stipulation of six months was for the plaintiff to tender the balance consideration amount and not for execution of the registered sale deed in consequence thereof. As per the second recital of the agreement, it is the plaintiff/appellant who was to pay the balance consideration amount within six months from the agreement, upon which the predecessor-in-interest of the defendants/respondents was duty-bound to execute a registered deed. However, the agreement does not mention any time limit for execution and registration of such sale deed.

27. Insofar as the six months' stipulation is concerned, there are pleadings galore throughout the plaint that such amount was repeatedly sought to be tendered within due time by the plaintiff/appellant, upon which the predecessor-in-interest of the defendants/respondents, without refusing to perform his part of the agreement, sought a postponement of the execution of such agreement every time.

28. Thus, going by the plaint pleadings, there cannot be any manner of doubt that the suit is not barred by limitation.

29. Even otherwise, it is well-settled that the question of limitation, under ordinary circumstances being a mixed question of fact and law, is amenable to being decided on a full-fledged trial on

evidence, and not at the threshold stage of Order VII Rule 11 of the Code of Civil Procedure.

30. From the judgment cited by the respondents, we do not find any contrary proposition being laid down. In the facts of the said case, as narrated by the Hon'ble Supreme Court, it was observed that if it was obvious from the pleadings themselves that the plaint is barred by any law, the court can reject the plaint on such ground. However, the narrative above clearly shows that the facts of the said case are entirely different from the present one.

31. Insofar as *Ahmadsahab Abdul Mulla* (supra), cited by the appellant, is concerned, we do not find that the plaintiff/appellant is directly aided in any manner by the proposition laid down therein, to the effect that the date fixed for the performance of a contract as per Article 54 of the Schedule to the Limitation Act is a fixed date. However, even going by such principle, as per the above discussions, the plaint ought not to, and could not, have been rejected by the learned Trial Judge.

32. The decisions taken into consideration by the learned Trial Judge are also distinguishable in the facts of the case. In *Fatehji & Company vs. L.M. Nagpal*, reported at *(2015) 8 SCC 390*, it was observed by the Hon'ble Supreme Court, in the facts of the said

case, that the rejection of the plaint in a specific performance suit was upheld where the date fixed for performance had long expired.

33. Contrary thereto, in the present case, there is no specific date enumerated in the agreement for completion of the performance of the agreement by executing a registered deed of conveyance.

34. Insofar as *Usha Devi vs. Ram Kumar Singh*, reported at *2024 SCC OnLine SC 1915*, is concerned, it was held therein that once the agreement fixed the time within which the sale deed was to be executed, limitation ran from that date.

35. As per the above discussions, the proposition laid down therein is also not applicable to the present circumstances.

36. Hence, we find that the impugned judgment suffers from an erroneous interpretation of the law governing the subject as well as errors of fact in construing the plaint on a plain and meaningful reading of the same, which is the essential and only yardstick in adjudicating an application for rejection of plaint.

37. In such view of the matter, the impugned judgment cannot be sustained.

38. Accordingly, FAT 357 of 2026 is allowed on contest, thereby setting aside the impugned judgment and deemed decree dated September 5, 2026 passed by the learned Civil Judge (Senior

Division) at Chandernagore, District - Hooghly in Title Suit no. 120 of 2026.

39. The learned Trial Judge shall now take up the suit for hearing on merits upon adduction of evidence.

40. Consequentially, CAN 1 of 2026 is also disposed of.

41. We make it abundantly clear that this Court has not conclusively decided any of the issues raised or to be raised in the suit and that the above findings are tentative in nature, arrived at only for the purpose of adjudicating the present appeal, arising out of the rejection of a plaint.

42. It will be open to the learned Trial Judge to decide all issues falling for consideration in the suit, including the issue of limitation, if raised, on their own merits and in accordance with law, without being unduly influenced in any manner by the observations made above.

43. There will be no order as to costs.

44. A formal decree be drawn up accordingly.

I agree. (**Sabyasachi Bhattacharyya, J**.)

(**Md. Shabbar Rashidi, J**.)

AD-11
Ct No.16
(SSS)