



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 27 OF 2025

Dineshkumar K. Jethliya Died Thru. Lrs. Netal N. Jethliya Thru.
Guardian Deepa S. Mandhana And Ors.

VERSUS

Gajanan Laxmanrao Shinde

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Mr. A. N. Sikchi, Advocate for the Applicants

Mr. S. S. Kazi, Advocate for Respondents

CORAM : SHAILESH P. BRAHME, J

DATE : MARCH 12, 2026

PC :

1. Heard learned Counsels for both sides.

2. Applicants are taking exception to the order dated 25.09.2024 passed below Exhibit 13 rejecting their application preferred under Order VII, Rule 11 of Code of Civil Procedure in Special Civil Suit No. 515/2024.

3. Respondent is the original Plaintiff in whose favour agreement to sale was executed on 09.03.2013 by deceased Dineshkumar Jethliya and his wife Durgadevi for selling three plots from Survey No. 262 situated at Jalna. The consideration was fixed at Rs.02,01,75,365/-. The earnest of amount Rs.33 lacs was paid to the Applicants. Unfortunately, both vendors and their son Naresh died in accident on 16.06.2013 leaving behind the Applicants. The sale deed

could not be executed and Respondent was required to collect information of whereabouts of Applicants. After establishing contact, he was assured that they would comply the part of the contract after mutating their names. He came across paper publication dated 17.07.2024. It was objected by him on 20.07.2024. Thereafter suit was filed for specific performance of contract and in alternatively for refund of earnest amount with interest.

4. Application Exhibit 13 was submitted by the Applicants under Order VII, Rule 11 of CPC seeking rejection of the plaint mainly on the ground of limitation by pressing into service Article 54 of the Limitation Act. By impugned order, Application was rejected holding that limitation would be mixed question of law and facts requiring objective scrutiny.

5. Learned Counsel Mr. Sikchi appearing for the Applicants submits that suit is hopelessly barred by limitation as the names of the Applicants were mutated in the year 2016 itself. It is submitted that the cause of action is cleverly drafted and illusion is created but the claim is vexatious. There are lapses on the part of Respondent from 10.03.2016 and notice was issued by him to Applicants. It is further submitted that it is perversity to record that limitation is mixed question of law and facts.

6. Learned Counsel Mr. Kazi appearing for Respondent supports the impugned order. He would submit that reasonable and plausible view has been taken by the Trial Court. The plea raised by the Applicants cannot be dealt with unless there is evidence on record.

7. As the plaint is sought to be rejected under Order VII, Rule 11 CPC, I have carefully gone through the plaint, cause of action and prayers. It can be gathered that unfortunate mishap occurred in the family of the Applicant, near about four members of the family died on 16.06.2013 in the accident. It has been specifically pleaded that time was consumed for the Respondent to find out the Applicants who are the heirs of the deceased persons. He was required to approach mediator, respectable person, Mr. Suresh Jethliya so as to pursue for performance of part of the contract.

8. It is further averred that after establishing contact with the Applicants, he was assured by them for performance of their part of contract after mutating their names and once they would come to Jalna. Their conduct was found to be inconsistent when the paper publication was issued on 17.07.2024, which is spelt out as cause of action and thereafter suit is filed for specific performance of contract. Meaningful reading of the plaint does not disclose that there was cause of action for

the Respondent – Plaintiff to file suit prior to 2024.

9. In the present matter, no specific date was fixed for execution of the sale deed. Therefore, first part of Article 54 of the Limitation Act can have no application. The case is covered by later part. The time would run when the Plaintiff would notice that performance is refused. Plaintiff shows that no sooner than Respondent came across publication dated 17.07.2024, he promptly raised objection in writing on 20.07.2024. No case is made out for the rejection of the plaint on the point of limitation. Impugned order is well founded and well reasoned.

10. Learned Counsel for Applicants relied on the judgment of *Mukund Bhavan Trust and Others vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Others*, MANU/SC/1382/2024 to buttress that limitation is not a mixed question of law and facts, if it is glaring from the plaint that suit is hopelessly barred by limitation. This judgment will not help the Applicants because there was no cause in 2016 or prior to 17.07.2024. Further reliance is placed on the judgment of *Sabbir (Dead) through L.Rs. Vs. Anjuman (Since Deceased) through L.Rs*, MANU/SC/1118/2023 to buttress that the Respondent did not issue any notice to Applicants to perform their part of the contract. The facts of that case are distinguishable from the case at hand. In the

present case, Respondent persuaded the Applicants who projected that they would perform part of contract. It is only in the year 2024 Respondent learnt about dishonest attitude of the Applicants.

11. Applicants further relies on judgment of Apex Court in case of *A. Valliammai Vs. K. P. Murali and Ors*, MANU/SC/1008/2023. My attention is adverted to paragraphs 21 & 22 of the judgment, which contain the discussion of Article 54. Apex Court decided Appeal, which was emanating from decision after full fledged trial by Trial Court and Appellate Court. It was not a case of rejection of plaint under Order VII, Rule 11 CPC. This judgment will not help the Applicants. Further reliance is placed on *Karan Luthra vs. M. K. Subba*, MANU/DE/3276/2024. The facts of that case are distinguishable. In the case at hand the Respondent got knowledge of refusal on part of Applicants only after 2024. This judgment can be of no help to the Applicants.

12. For the reasons stated herein above, I find no substance in the Revision Application and the same is rejected.

(SHAILESH P. BRAHME, J.)

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