



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

CIVIL REVISION APPLICATION NO. 61 OF 2026

1. M/s Lahoti Properties,
Registered Partnership Firm
Through its Partner
Ajay S/o Shriniwas Lahoti,
Age : 56 Years, Occu. : Business,
R/o Lahoti Compound,
Dayaram Road, Latur,
Dist. Latur.
 2. Ajay S/o Shriniwas Lahoti,
Age : 56 Years, Occu. : Business,
R/o Lahoti Compound,
Dayaram Road, Latur,
Dist. Latur.
 3. Rajesh Shriniwasji Lahoti,
Age : 51 Years, Occu. : Business,
R/o As above.
 4. Kamalnayan Shriniwasji Lahoti,
Age : 48 Years, Occu. : Business,
R/o As above.
 5. Anand Shriniwasji Lahoti,
Age : 44 Years, Occu. : Business,
R/o As above.
- .. Applicants

Versus

1. Gangabhishan S/o Madangopal Bhutada,
Age : 55 Years, Occu. : Business,
R/o Dwarkanagari, Lahoti Compound,
Dayaram Road, Latur, Dist. Latur.

2. Shrikant Dwarkadasji Bhutada,
Age : 49 Years, Occu. : Business,
R/o Bhusar Lane, Latur,
Tq. & Dist. Latur.
3. Shriram Dwarkadasji Bhutada,
Age : 53 Years, Occu. : Business,
R/o Dwarkanagari, Lahoti Compound,
Dayaram Road, Latur, Dist. Latur.
4. Balkishan Dwarkadasji Bhutada,
Since deceased through his L. Rs.
- 4-a Krishnakant Balkishanji Bhutada,
Age : 31 Years, Occu. : Business,
R/o Dwarkanagari, Lahoti Compound,
Dayaram Road, Latur, Dist. Latur.
- 4-b Mrs. Poonam Navalkishor Dalia,
Age : 41 Years, Occu. : Household,
R/o Begum Bazar, Hyderabad,
Hyderabad 500 012.
- 4-c Mrs. Pranali Kranshanji Bangad,
Age : 38 Years, Occu. : Household,
R/o Bangad Sadan, Avanti Nagar,
Hyderabad 500 012.
- 4-d Mrs. Senha Prakashchand Rathi,
Age : 36 Years, Occu. : Household,
R/o shanker Bazar,
Hyderabad 500 012.
5. Smt. Ushabai Damodarji Bhudata,
Age : 57 Years, Occu. : Business,
R/o Dwarkanagari, Lahoti Compound,
Dayaram Road, Latur, Dist. Latur. .. Respondents

Shri P. R. Katneshwarkar, Senior Advocate i/by Shri Swapnil S. Rathi, Advocate for the Applicants.
Shri Hussaini Zabiulla Zahirulla, Advocate for the Respondent No. 1.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 12.03.2026
JUDGMENT PRONOUNCED ON : 24.03.2026

JUDGMENT :

. Heard both sides finally with their consents.

2. Applicants are assailing order dated 03.02.2026 passed below Exhibit 41, refusing to reject plaint under Order VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the “C. P. C.”) in Spl. C. S. No. 216 of 2023. They are original defendant Nos. 1 to 5. The respondent No. 1 is the original plaintiff. The respondent Nos. 2 to 5 are original defendant Nos. 6 to 9. Parties are referred to by their original status in the suit.

3. The controversy pertains to 32 plots which are part and parcel of gut No. 4/5 admeasuring 1H 24R situated at Khopegaon, Tq. and Dist. Latur. The plaintiff and his family members are the owner of the subject matter and other lands. A development agreement was executed and registered on 31.05.2014 between the defendant No. 1 on one hand and the plaintiff and others for the purpose of housing project which was

to be completed within four years. Accordingly defendant No. 1 paid Rs. 3.20 crores to the plaintiff and other persons. The plaintiff received Rs. 82 Lakhs towards his share. There were disputes and development agreement could not be materialized. Alternatively it was agreed between the parties to sell the plots to the defendant No. 1. A registered sale deed was executed on 27.11.2017 for 32 plots by plaintiff in favour of defendant Nos. 1 to 5 for consideration of Rs. 17 crores. It was agreed to adjust the earlier payments made in pursuance of development agreement. Accordingly plaintiff was to get Rs. 3.94 Lakhs towards his share. He was given cheques by the defendant Nos. 1 to 5.

4. All cheques were not honoured and plaintiff owed Rs. 1,86,80,000/- from the defendants. Time was extended by him upto 31.03.2020 for payment of the balance amount, but he was unable to secure the payment. On or about 20.11.2022 plaintiff offered to refund the amount he received towards earnest and solicited possession of the plots. But the defendants refused to accede. This gave cause of action for filing Spl. C. S. No. 482 of 2022 for possession and in alternative recovery of Rs. 2,61,53,000/-. The sole defendant No. 1 appeared in the suit and contested the same.

5. Plaintiff submitted application Exhibit 31 U/o XXIII Rule 1 of the C. P. C. seeking withdrawal of the suit on the ground of formal defects stated in para No. 8 of the application. It was contested by the defendant. By reasoned order trial Court

allowed the application with cost and granted permission to withdraw earlier suit with liberty to file fresh suit on same cause of action vide order dated 21.10.2023. It was challenged by the defendant No. 1 in Writ Petition No. 14806 of 2023. The learned Single Judge dismissed the writ petition by reasoned order on 08.05.2024. The order was confirmed by the Hon'ble Apex Court.

6. In pursuance of the liberty granted by the Trial Court for filing fresh suit on same cause of action the plaintiff preferred Spl. C. S. No. 216 of 2023 on 01.11.2023. The reliefs of specific performance of contract, possession, mandatory injunction, perpetual injunction and repayment of Rs. 2,33,56,000/- with interest are solicited. The partners of the original defendant No. 1 are also impleaded as defendant Nos. 2 to 5 in the suit.

7. The defendant Nos. 1 to 5 filed application Exhibit 41 U/O VII Rule 11(a) and (d) of the C. P. C. seeking rejection of plaint on the ground of bar U/O II Rule 2 of the C. P. C., want of cause of action and limitation. It was contested by the plaintiff. The Trial Court rejected the application on 25.10.2024. Being aggrieved Civil Revision Application No. 172 of 2024 was filed. After hearing both the sides, this Court partly allowed the revision and directed the Trial Court to decide application Exhibit 41 afresh keeping all grounds open which were incorporated in application Exhibit 41. The Trial Court after extending opportunity to the parties rejected the application by the impugned order.

8. Learned senior counsel Mr. P. R. Katneshwarkar appearing for the applicants – defendant Nos. 1 to 5 submits that plaintiff was granted permission to withdraw the earlier suit with a liberty to file suit on same cause of action. The subsequently filed suit has not been filed on same cause of action and multiple additional prayers have been made which is not tenable. It is vehemently submitted that a specific ground of bar under Order II Rule 2 of the C. P. C. was pressed into service. No evidence is required to examine the objection. But trial court rejected the objection by assigning unsustainable and perverse reasons. It is further submitted that while remanding the matter by this Court all points were kept open to be agitated, but the trial court did not consider all the objections which is error of jurisdiction. It is further submitted that meaningful reading of the plaint discloses that suit is hopelessly barred by limitation and no objective scrutiny is required to come to this conclusion. It is further submitted that the plaintiff cleverly omitted to challenge the sale deed dated 27.11.2017 to overcome the impediment of limitation. The plaint is liable to be rejected for want of cause of action. My attention is adverted to Order XXIII Rule 4 of the C. P. C. to buttress that the suit is not tenable.

9. Per contra, learned counsel appearing for the plaintiff submits that the cause of action in earlier suit and the present suit is identical. The suit is maintainable as it is filed in

pursuance of the liberty granted by the Trial Court vide order below Exhibit 31 which was confirmed upto Supreme Court. It is submitted that the first cause of action arose on 20.11.2022 from which the limitation would reckon and not prior to that. It is further submitted that trial court is justified in observing that the evidence is required to examine the contentious issue of bar under Order II Rule 2 of the C. P. C. It is further submitted that the condition imposed while withdrawing earlier suit was to the extent of cause of action only and not for additional prayers. It is further submitted that no reliefs are omitted by the plaintiffs in filing the suit. The plaintiff was the co-sharer and joint vendor of the sale deed executed on 27.11.2017. Other co-sharers had no dispute and difficulty with the plaintiff. Therefore, there was no reason for seeking cancellation of the sale deed. It is submitted that the plausible view has been taken and the contentious issues would be examined during the course of trial and the revision is liable to be rejected.

10. There is no dispute that Spl. C. S. No. 482 of 2022 was permitted to be withdrawn with a liberty to file fresh suit vide order dated 21.10.2023 passed below Exhibit 31 which is as follows :

ORDER

- 1) Application is allowed subject to cost of Rs. 2000/- (Two Thousand), which be paid to the defendant.
- 2) Permission is granted for withdrawal of the suit with

liberty to file fresh suit on the same cause of action.

11. The present suit is filed on 01.11.2023. The plaint of the earlier suit is placed on record. It is necessary to examine the prayers of both the suits. In earlier suit prayers were for possession and in the alternatively for refund of Rs. 2,61,52,000/- with interest at the rate of Rs. 15% per annum and direction to keep charge over the suit land. In the present suit following are the prayers.

- a) The Hon'ble Court pleased to order and direct the defendant no. 1 to 5 to re-convey the suit property in favour of the plaintiff, as described in Para no. 1 above and as marked in red ink on the copy of the attached herewith and marked as Annexure 'I' to register Deed of Re-Conveyance before the Sub-Registrar, Latur.
- b) The Hon'ble Court pleased to order and direct the defendant no. 1 to 5 to re-deliver vacant and peaceful possession of the suit property in favour of the plaintiff.
- c) The Hon'ble Court pleased to order and direct the defendant no. 1 to 5 to do and comply with all necessary requirement and obligation and formalities, obtaining no objections etc. and to do all acts and things as may be necessary or essential to give complete effect to the relief of specific performance including that of re-delivery of possession, execution of the re-conveyance deed and its registration etc.
- d) The Defendant no. 1 to 5 or anybody claiming through them may kindly be restrained by an order of permanent injunction from creating third party interest / part with the possession over the suit properties.
- e) The Hon'ble Court pleased to order a decree to recover the

Rs. 233,56,000=00 (Rs. Two crore thirty – three lakhs fifty-six thousand only) in favour of the plaintiff as against defendant nos. 1 to 5 and accordingly it may kindly be ordered and directed to payment and remit the amount as mentioned hereinabove to the plaintiff.

- f) The Hon'ble Court be pleased to order an interest @ 24% p.a. from the filing of the suit till the date of payment of decree.
- g) Any other relief that this Hon'ble Court may deemed fit in the larger interest of justice, may also be granted in favour of the plaintiff as against the defendant nos. 1 to 5.
- h) The Ad-interim relief in terms of prayer clause 'c' above may kindly be granted till the decision of the suit.
- i) The costs of the suit may kindly be awarded.
- j) Any other just and equitable orders in the interest of justice may be passed.

12. It is manifest that the prayers as referred above in clause No. (a), (c), (d) are additional in nature. If the present suit is filed by the plaintiff on the same cause of action in pursuance of the liberty granted by the Trial Court vide order dated 21.01.2023 below Exhibit 31 then it can be inferred that additional prayers were available when earlier suit was filed but were not solicited. The relief was restricted to the possession and recovery of amount in earlier suit. The plaint of both the suits, prayers and causes of action therein were before the Trial Court. I find that there was no impediment for trial court in examining the ground of Order II Rule 2 of the C. P. C.

13. I have gone through application Exhibit 41. It spells out in so many words that specific objection of the defendants was raised for misuse of the liberty granted by the trial court as additional prayers are solicited in the present suit. The objection of bar U/O II Rule 2 of the C. P. C. has been spelt out in para No. 4, 5 and 7 of the application. Therefore, I find that trial court again committed apparent mistake in doubting the similarity of the cause of action of both the suits. It is the plaintiffs case that a present suit has been filed on same cause of action. Therefore, going by the meaningful reading of the plaint only inference possible is that suit is filed on same cause of action.

14. Reliance is placed on the judgment cited by learned senior counsel in the matter of **Cuddalore Powergen Corporation Ltd. Vs. M/s Chemplast Cuddlor Vinyls Ltd. and another** reported in **2025(1) ALT 92**. In that matter the objection under Order II Rule 2 of the C. P. C. was raised for rejection of plaint by filing application U/O VII Rule 11 of the C. P. C. The Trial Court rejected plaint of subsequently filed suit. Being aggrieved appeal was preferred before the appellate Court, which was dismissed. Thereafter matter was carried to High Court, and the second appeal was allowed. Thereafter Apex Court confirmed the order of the High Court. In the meticulously recorded facts and the reasons of the Apex Court it has not been either agitated or laid down that bar U/O II Rule 2 of the C. P. C. cannot be pressed into service while seeking rejection of plaint U/O VII Rule 11 of the C. P. C.

15. To fortify the proposition that plea under Order II Rule 2 can be pressed into service at the stage of Order VII Rule 11 is more specified in following paragraphs in the same judgment.

“56. Order VII Rule 11(d) reads as – “where the suit appears from the statement in the plaint to be barred by any law”. In light of the aforesaid, it follows that before rejecting the plaint under Order VII Rule 11(d), the Courts must ensure that the plaint is read as a whole and its entire averments are looked into. A few lines or passages must not be read in isolation and it is imperative that the pleadings are read as a whole for ascertaining the true import of the averments therein. In performing such a holistic reading, it must be deduced whether the causes of action in both the suits are identical in substance in order to sustain a successful plea under Order II Rule 2. It would be a reductive approach to only cull out the cause of action paragraphs from the respective plaints and decide that they disclose the same cause of action on mere comparative overview.”

In the impugned order it is observed by the Trial Court that evidence is required to take into consideration the bar under Order II Rule 2 of the C. P. C. runs counter to legal position. The judgment referred above was cited before Trial Court.

16. I am shown the observation of the trial court that subsequently filed suit would not be treated to be separate suit. Earlier suit was withdrawn with a liberty to file separate suit. If the provision of Order XXIII Rule 2 of the C. P. C. is perused, then subsequently filed suit would be treated as separate proceeding. For the sake of limitation also the first suit is non existent. By implication of Order XIII of the C. P. C. the trial court erred in holding that present suit is not a separate suit.

17. The plaintiff is relying upon the sale deed dated 27.11.2017. It is argued by learned counsel for plaintiff that the registered sale deed could not have been challenged or solicited to be revoked because there were other co-sharers or co-vendors. The plaintiff had no difficulty for the transaction with other co-owners and therefore it was not necessary to seek the relief of cancellation of the sale deed. These submissions are logical and therefore, the objection of the defendants that in the present suit without seeking relief of cancellation of sale deed other reliefs are solicited which is a clever drafting cannot be countenanced.

18. The plaintiff is entitled to seek relief of specific performance of contract of the terms incorporated in sale deed dated 27.11.2017 for the default in making payment of consideration by the defendant. The prayers for specific performance of contract, mandatory and perpetual injunction are based upon same cause of action. Those could have been solicited by the plaintiff in earlier suit. In such situation, I find that Order II Rule 2 of the C. P. C. is squarely applicable. The plaintiff omitted to solicit prayer a, c and d in earlier round of litigation and no permission to that effect was ever solicited from court in earlier matter.

19. There is specific bar under Order II Rule 2(3) of the C. P. C. The plaintiff is precluded to sue for the relief omitted from the earlier proceedings. It would be apposite to reproduce the

relevant provision.

THE CODE OF CIVIL PROCEDURE

ORDER II

1. ...

2. Suit to include the whole claim.—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) **Relinquishment of part of claim.**—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) **Omission to sue for one of several reliefs.**—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

20. In this regard, learned senior counsel for the applicants is referring to the latest judgment of the Apex Court in the matter of Cuddalore Powergen Corporation Ltd. Vs. M/s Chemplast Cuddlor Vinyls Ltd. and another (supra). In that case the earlier suit was filed for injunction. The subsequent suit was filed by plaintiff for specific performance of contract, declaration that the sale deed executed by defendant No. 1 in favour of defendant No.2 was void and perpetual injunction. The plaint was sought to be rejected by defendant No. 2 who was appellant before Supreme Court. Trial Court allowed the application and rejected the plaint which was

confirmed by the Appellate Court. However, High Court reversed the orders which is confirmed by the Supreme Court. In the elaborate judgment the purport of objection under Order II Rule 2 is dealt with by the Apex Court. In that case it was ultimately recorded that the cause of action of subsequent suit was not the same. In the case at hand, it is the plaintiff's case himself that there is identical cause of action because present suit is filed as per the liberty given in earlier suit to file the suit on same cause of action. But the ratio laid down is relevant and binding.

21. The observations of the Apex Court in the above judgment are as follows :

38. Order II Rule 2(1) requires every suit to include the whole of the claim to which the plaintiff is entitled to in respect of a particular cause of action. However, the plaintiff has an option to relinquish any part of his claim for the purpose of bringing the suit within the jurisdiction of any court. Order II Rule 2(2) contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, then he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2(2) does not contemplate the omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief(s) earlier omitted except in a situation where leave of the court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order II Rules 2(2) and (3) CPC that the aforesaid two sub-rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits

or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situation where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit, provided that at the time of omission to claim the particular relief, he had obtained the leave of the court in the first suit.

44. Therefore, the phrase “cause of action” for the purposes of Order II Rule 2 would mean the cause of action which gives an occasion for and forms the foundation of the suit. If that cause enables a person to ask for a larger and wider relief than that to which he limits his claim, he cannot be permitted to recover the balance reliefs through independent proceedings afterwards, especially when the leave of the court has not been obtained.

45. A Constitutional Bench of this Court in *Gurbux Singh* (supra) emphasized that the plaint in the former suit would have to be produced in order to sustain a plea of applicability of Order II Rule 2 in the subsequent suit. While stating so, the Court observed that the “cause of action” would be the facts which the plaintiff had then alleged to support the right to the relief that he claimed. The Court also laid down that the defendant who seeks to take recourse to a successful plea under Order II Rule 2(3) must make out the following: (a) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) that in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) that being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. The Court had observed as under :

“6. In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (i) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the

relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It is common ground that the pleadings in CS 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2 Rule 2 of the Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit being on the record, a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code was not maintainable." (emphasis supplied) Therefore, there must exist an identity between the cause of action which forms the basis of the former and the subsequent suit. Since the plea taken under Order II Rule 2 is a technical one, it has to be established satisfactorily and it cannot be presumed merely on the basis of inferential reasoning.

22. Thereafter, in paragraph No. 47 Apex Court culled down the principles deducible from the various authorities in respect of the cause of action and bar under Order II Rule 2. To avoid the

repetition, I propose to refer the relevant principle which is as follows :

“47. On a conspectus of the aforesaid discussion, what follows is that:

- i.
- ii.
- iii.
- iv.

v. The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

I hold that suit in present case is not tenable.

23. Learned senior counsel Mr. Katneshwarkar has also vehemently submitted that suit is apparently barred by limitation. The Trial Court refused to examine this aspect of the matter as it is recorded to be a mixed question of facts and law. It is not that in every case limitation can be said to be mixed question of facts and law. In the case at hand bare reading of the plaint, cause of action and the limitation clause stated in the plaint if it can be inferred that suit is barred by limitation then further evidence and objective scrutiny is not necessary.

24. Applicant is seeking pre-dominantly relief of re-conveyance

of the suit plots in his favour banking upon the terms recited in sale deed dated 27.11.2017. The prayers of delivery of possession, mandatory/perpetual injunction and recovery of amount are consequential in nature and dependent upon the main prayer. The cause of action has been specifically stated to have been accrued first on 27.11.2017. For the relief of specific performance of contract, the cause of action is the one when the plaintiff realizes that defendant has refused to perform his part of contract. On 27.11.2017 contract came into existence, therefore, that cannot be said to be starting point of limitation. It is stated that the cheque of Rs.89,60,000/- issued on 18.06.2019 was dishonoured on 21.06.2019. Thus 21.06.2019 has been specifically quoted to be cause of action. Thereafter, on 20.11.2022 the defendant is stated to have flatly denied re-delivery of possession to the plaintiff. By the reading of the plaint it can be said that limitation would reckon from 21.06.2019. The suit is filed on 01.11.2023 which is beyond period of three years as per Article 54 of the Limitation Act. In this regard, it is necessary to look into the provisions of Order XXIII Rule 2. By implication of said provision the filing of the first suit is inconsequential for determining the limitation in the present suit.

25. Learned senior counsel has relied upon the judgment of Nikhila Divyang Mehta and another Vs. Hitesh P. Sanghvi and others reported in *2025 SCC OnLine SC 779* to buttress that when *ex-facie* it is noticed that the suit is barred by limitation, the objection for

the limitation can be entertained under Order VII Rule 11. The judgment is helpful to the applicant. Further reliance is placed on the judgment of Raghvendra Sharan SingVs. Ram Prasanna Singh (Dead) by L.Rs. reported in *AIR 2019 SC 1430* which is also on the same line.

26. Further reference is made to the principles laid down by Supreme Court in Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead through L. Rs. and others reported in *(2020) 7 SCC 366*. I find that suit is barred by limitation. The Trial Court committed error of jurisdiction in overlooking this aspect of the matter and deferring the issue for its decision after full-fledged trial.

27. The learned counsel for the respondents has also relied on the judgment of Cuddalore Powergen Corporation Ltd. Vs. M/s Chemplast Cuddlor Vinyls Ltd. and another (supra) which is considered already. Further reliance is placed on the judgment of Single Judge of Punjab and Haryana High Court in **Nisha Sharma Vs. Bimaljeet Kaur @ Jasvir Kaur and others in C. R. No. 5868 of 2024 (O & M) dt. 08.04.2025**. In that case it was observed that the defendant could not establish that the subsequent suit was based upon same cause of action. The facts are distinguishable. This judgment will not enure to the benefits of the respondents.

28. Earlier suit was withdrawn by the plaintiff due to the defect enumerated in the application Exhibit 31 with the

permission of the Court. Therefore, Order XXIII comes into play. The Trial Court was obliged to deal with objection related to Order XXIII Rule 4, because while remanding the matter, this Court had directed to take into consideration all grounds raised in the application. This particular objection can be spelt out from the application Exhibit 41, albeit, specific provision is not quoted. The Trial Court failed to take into account the objection.

29. In the case at hand relief pertaining to specific performance of contract was available, but it was omitted in the earlier suit. In the subsequent suit the said relief with predominance comes to the fore. The plaintiff is precluded from filing a fresh suit in the absence of the permission of the Trial Court to institute fresh suit for the abandoned relief also. The plaint is liable to be rejected U/O XXIII Rule 1(4) of the C. P. C. Considering the nature of interplay of Order XXIII Rule 1(4) and Order II Rule 2(3) of the C. P. C. suit is not maintainable.

30. The trial court failed to take into account interplay between Order XXIII and Order II. The Trial Court has to watchful while entertaining later suit when earlier one is withdrawn with liberty to file fresh suit. Under the garb of removal of defect the plaintiff cannot be permitted to sue time barred claim or sue for additional reliefs. Otherwise that amounts to enlarging of the scope. But it is equally permissible if it was pointed to court while withdrawing suit that appropriate relief founded on same cause of action remained to be sought for.

In that case pragmatic approach would be taken in granting permission for additional relief. This caution is not taken by the plaintiff in the present matter.

31. For the foregoing reasons, I am of the considered view that impugned order is unsustainable. I therefore, pass the following order.

O R D E R

- (i) Civil revision application is allowed.
- (ii) The order dated 03.02.2026 below Exh. 41 passed by learned 05th Jt Civil Judge Senior Division, Latur in Spl. C. S. No. 216 of 2023 is quashed and set aside.
- (iii) The respondent No. 1 – plaintiff is not precluded from suing the applicants – defendants as is permissible in law.
- (iv) The plaint in Spl. C. S. No. 216 of 2023 shall stand rejected and the decree be drawn accordingly.
- (v) There shall be no order as to cost.

[SHAILESH P. BRAHME J.]

bsb/March 26