

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 10 OF 2026

Rajshekhar Virpaxappa Tambake

... Applicant

Versus

Ravindrakumar Namdeo Bachche And Ors.

... Respondents

Mr. Pradeep D. Dalvi for the Applicant.
None for the Respondents.

CORAM : M. M. SATHAYE, J.

DATE : 2nd February 2026.

P. C. :

1. Heard learned Counsel for the Revision Applicant. Perused the record.
2. The Revision Application is filed by Defendant No. 2 challenging the impugned order dated 23.09.2025 passed below Exhibit-40 in R.C.S. No. 126 of 2021.
3. Defendant No. 2 is a subsequent purchaser of the suit property from Defendant No. 1. Defendant No. 2 filed Application Exhibit-40 under the provisions of Order VII Rule 11(d) of the Code of Civil Procedure, 1908 ('CPC' for short), contending *inter alia* that the plaint discloses an illusory cause of action and that from the averments in the plaint itself, the suit is barred by limitation and therefore the plaint is liable to be rejected.
4. Mr. Dalvi, learned Counsel for the Petitioner, invited the Court's attention to the pleadings as well as the prayers in the plaint. He contended

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that the last document referred in the pleadings, dated 15.12.2020 can, at the most, be considered as an acknowledgment or guarantee in respect of earlier documents in favour of the Plaintiffs; however, the same by itself is not an agreement of which specific performance can be sought. He submitted that under Article 54 (second part) of the Limitation Act, 1963, a suit for specific performance is required to be filed within a period of three years from the date of knowledge of refusal and therefore suit is barred by limitation.

5. I have considered the submissions and perused the plaint.

6. It is a settled position of law that for the purpose of rejection of a plaint, the Court can consider only the averments in the plaint as well as the documents relied upon along with the plaint. However, the defence raised in application seeking rejection or a possible defence that may be taken by defendant, cannot be considered at the stage of rejection of the plaint.

7. In paragraph No. 24 of the plaint, it is stated by the Respondents/Plaintiffs that under a notarized agreement dated 15.12.2020, Defendant No. 1 gave a guarantee and promise to complete the transaction after getting the registered document in favour of the present Petitioner/Defendant No.2 dated 25.07.2018 set aside

8. In paragraph No. 29 of the plaint, reference is made to the notarized document dated 15.12.2020, wherein it is stated that under the said agreement, an acknowledgment is given.

9. By way of abundant caution, I have perused the copy of the agreement dated 15.12.2020 shown by the Petitioner to the Court. In the said document, after narrating the transactions commencing from the development agreement of December 2009 and thereafter the first agreement with the Plaintiffs in January 2010, the entire transaction has been detailed and in paragraph No. 15, it is admitted that Defendant No. 1 is bound to get the

document executed in favour of the present Petitioner/Defendant No. 2 cancelled/set aside and is further bound to execute sale-deed in favour of the Plaintiffs.

10. In light of the aforesaid pleadings and documents on record, when the impugned order is perused, it is seen that the learned Trial Judge has rightly held that the issue of limitation is a mixed question of fact and law and that a plaint containing such pleadings cannot be rejected at the threshold, on the ground of limitation. Application of second part of Article 54 of the Limitation Act depends upon facts and circumstances of this case about knowledge of refusal, which is a matter of evidence.

11. In such circumstances, I do not find that pleadings are of such nature that cause of action can be called illusory or the Plaintiffs can be non-suited at the threshold without opportunity to lead evidence.

12. In that view of the matter, no apparent illegality or perversity is found in the impugned order. The view taken by the learned Trial Judge is a possible one, and therefore, no interference is warranted in limited jurisdiction of this Court under section 115 of CPC.

13. The Revision Application is accordingly dismissed. No order as to costs.

14. Needless to mention, that the observations made in this order are limited to adjudication of this Revision Application, and the suit shall be decided on its own merits, on the basis of evidence, in accordance with law.

[M. M. SATHAYE, J.]