IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 531 OF 2026

Emmanuel Raphael ...Applicant

Versus

Iqbal Ahmad Abdul Razzaq Siddiqui
Through C A Aijaz Ahmed Abdul Razzaq
Siddiqui ...Respondent

Mr. Vishal Kanade, a/w Akshay Shah and Harsh Shah, for the Applicant.

CORAM : N. J. JAMADAR, J.
DATED : 6th OCTOBER, 2026

SANTOSH SUBHASH KULKARNI

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Date: 2026.10.08 17:01:19 +0530

Order:-

1. Heard the learned Counsel for the applicant.

2. This revision application is directed against an order dated 19th August, 2026 passed by the learned Judge, City Civil Court, in Notice of Motion No.3756/2024, whereby the said Notice of Motion taken out by the applicant-defendant for rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ("the Code"), came to be dismissed.

3. The respondent-plaintiff has instituted a suit seeking a declaration that the Memorandum of Understanding ("MoU") dated 30th May, 2011, whereunder the applicant-defendant agreed to sell flat No.8/6 situated in Assisi Co-operative

Housing Society Ltd., ("the suit flat") to the plaintiff for a consideration of Rs.24,00,000/- was still valid, subsisting and enforceable in law and for a decree of specific performance of the said contract by accepting the balance consideration of Rs.12,00,000/-.

4. The defendant took out the Notice of Motion seeking the rejection of the plaint on the ground that the suit was *ex facie* barred by law of limitation as, in accordance with the terms of the MoU, the contract was to be performed within a period of three months, i.e. by 30th August, 2011, and, thus, the period of limitation expired on 30th August, 2014.

5. The learned Judge, City Civil Court, was not persuaded to accede to the submission on behalf of the defendant as the question as to whether the suit was barred by law of limitation, required investigation into facts and, thus, it appeared to be a mixed question of facts and law.

6. Mr. Kanade, the learned Counsel for the applicant, took the Court through the terms of the MoU, especially Clause 9 thereof under which it was stipulated that the said agreement may be cancelled or terminated by the vendor if he failed to obtain the NOC from the housing society for the transfer of the suit flat, and that the vendor would return the part

consideration alongwith interest at the rate of 15% per month. Attention of the Court was also invited to an undertaking dated 30th May, 2011, executed by the applicant-vendor, to refund the said amount of Rs.12,00,000/- alongwith interest at the rate of 15% per month in the event of his failure to obtain the NOC for transfer from the housing society. Thus, Mr. Kanade would urge, the case in hand was that of "date fixed" for the performance of the contract, and, therefore, would fall within the first part of Article 54 of the Limitation Act, 1963.

7. I am afraid to accede to the aforesaid submissions. It is trite, at the stage of consideration of the prayer for rejection of the plaint only the averments in the plaint and the documents annexed thereto are required to be read and that too in a meaningful and not formalistic manner. Ordinarily, and in a majority of cases, the question of limitation is a mixed question of law and facts. However, where the suit is *ex facie* barred by law of limitation, the Court may justifiably exercise the power under Order VII Rule 11 of the Code to nip in the bud a fruitless and vexatious litigation. ***(Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and***

others[1] and *Shri Mukund Bhavan Trust and others vs. Shriman Chhatrapati Udayan Raje*[2]*).*

8. In the case at hand, a meaningful reading of the plaint as a whole, especially paragraphs 9 and 10 thereof, would indicate that as late as 19th December, 2019, the defendant assured the plaintiff that he would execute the sale deed and register the instrument or refund the part consideration of Rs.12,00,000/- alongwith interest at the rate of 18% per annum. In fact, a sum of Rs.3,00,000/- was paid by the defendant to the plaintiff on 16th January, 2020, and allegedly the defendant had agreed to refund the balance amount alongwith interest at the rate of 18% per annum by the end of January 2020. Having realized that the defendant had no intent to refund the amount, the plaintiff claimed to have instituted the suit.

9. The aforesaid assertions coupled with the fact that in the month of January 2020, part amount was allegedly refunded by the defendant, *prima facie,* justify an inference that, the defendant had not terminated the contract in accordance with the stipulation in Clause 9 of the MoU as late as January, 2020, though the said clause gave option to the defendant to terminate the contract if he failed to obtain NOC from the housing society.

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1 (2020) 7 Supreme Court Cases 366.

2 Civil Appeal/14807/2024, dtd.20/12/2024.

10. If viewed through the aforesaid prism, the view of the trial Court that, in the facts of the case, the aspect of limitation was a mixed question of facts and law appears justifiable.

11. Mr. Kanade attempted to salvage the position by canvassing a submission that there was no prayer for damages in the suit. Suffice to note, whether the plaintiff would eventually succeed in obtaining a decree for specific performance is not the touchstone on which a prayer for rejection of the plaint can be appreciated. Moreover, in a suit for specific performance the plaintiff may claim damages in addition to the decree for specific performance at any stage.

12. For the forging reasons, this Court does not find that the impugned order suffers from any jurisdictional error or material irregularity in the exercise of jurisdiction.

13. The application, thus, stands rejected.

[N. J. JAMADAR, J.]