

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15518 OF 2025

AFAMADO ADVISORY SERVICES PVT. LTD.

a company registered under the Companies Act, 1956, bearing CIN No: U17120MH2013 PTC251052, having its Registered Office at Shreeji Chambers Premises Co-operative Society Ltd., Tata Road, Opp. Prasad Chambers Shanker Sheth Road, Girgaum, Mumbai 400004, represented through its Director Mr. Shashank Shripad Vijayakar

...Petitioner

Versus

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN RAMCHANDRA
SANKPAL
Date: 2026.04.02
22:03:30 +0530

1. M/s Maharashtra Wood Based Industrial

Estate, a Partnership Firm registered under the Indian Partnership Act, 1932 represented through its Partner Mr. Prabhudas Dayabhai Patel, Age – 74 years, Occ – Business, having its Registered office at House No. 466, Jaihind Properties, Kalyan Bhivandi Road, Kongaon, Kalyan-421311

2. Binani Industries Limited,

(currently known as *BIL VYAPAR LTD.*), a company registered under the Companies Act, 1956, bearing CIN No. L24117WB196PLC025584, having its Registered Office at 37/2 Chinar Park, New Town, Rajarhat, Main Road, P. O. Hatiara, Kolkata– 700157 and Corporate Office at Mercantile Chamber, 12, J. N Heredia Marg, Ballard Estate, Mumbai - 400001, represented through its Director Mr. Rajesh Kumar Bagri.

...Respondents

Mr. G S Godbole, Senior Advocate, a/w Mr. Kuber i/b Mr. Abhishek Ganesan, for the Petitioner.

Mr. Deepan Dixit a/w Mr. Virendra Pandey i/b B S Mahajani, for the Respondent No. 1.

Mr. Ashish Mishra i/b MZM Legal, for Respondent No. 2.

CORAM : **N. J. JAMADAR, J.**
RESERVED ON : **10th MARCH 2026**
PRONOUNCED ON : **02nd APRIL 2026**

JUDGMENT:

1. Rule. Rule made returnable forthwith, and with the consent of learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India, the Petitioner – original Defendant No. 2 takes exception to an order dated 25th June, 2025 passed by the learned District Judge, Bhiwandi on an application (Exh. 23) in Commercial Suit No. 02/2024, whereby the said application preferred by the petitioner for rejection of the plaint under the provisions of Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 (‘the Code’), came to be rejected.

3. The background facts leading to this petition can be summarized as under:-

3.1 M/s. Maharashtra Wood Based Industrial Estate (R-1) is a registered partnership firm. Binani Industries Ltd. (R-2) – original Defendant No. 1 is a company incorporated under the Companies Act, 1956. Afamado Advisory – the petitioner (original Defendant

No. 2), the Respondent No. 1 claims, is a sister company of Binani Industries (D-1). (For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the Commercial Court in Suit No. 02/2024.)

3.2 Before M/s. Maharashtra Wood Based Industrial Estate/the plaintiff came to be registered as a partnership firm, it was a proprietary concern and Prabhudas Patel was engaged in the business as a sole proprietor thereof. On 01st February, 2019, Hiren Patel, the son of Pradbhudas Patel, joined Prabhudas Patel to form the plaintiff - firm.

3.3 The plaintiff asserts, the Defendant No. 1 agreed to sell a large tract of land situated at Khanivali and Ambiste, Tq. Wada admeasuring 23H 8R to the plaintiff for a consideration of Rs. 14,25,00,000/-. Pursuant to the said agreement, on 03rd January, 2019, a sum of Rs. 21,00,000/- (Rupees Twenty One Lakhs) was credited to the account of Defendant No. 1 towards part consideration. A receipt was passed by the Defendant No. 1 on 03rd January, 2019.

3.4 Subsequently, on 21st January, 2019, a Memorandum of Understanding came to be executed by and between the

Defendant No. 1 and Prabhudas Patel on behalf of the then proprietorship concern.

3.5 In pursuance of the said contract, evidenced by MoU, the plaintiff took various steps and parted with consideration of Rs. 59,40,000/- (Rupees Fifty Nine Lakhs Forty Thousand) over a period of time. No objection of the state level committee for the establishment of the proposed Wood Based Industrial Estate was obtained. The Defendant No. 1 also obtained permission to put the subject land to non-agricultural use. A draft deed of conveyance was submitted for adjudication of the stamp duty.

3.6 The Defendant No. 1 thereafter resiled from its obligations under the said contract. Instead, the Defendant No. 1, during the subsistence of the said contract, between the plaintiff and Defendant No. 1, executed a conveyance in favour of Defendant No. 2, on 31st March, 2021 and got it registered on 11th May, 2021. Thus, the Plaintiff No. 1 had initiated various measures including institution of the Special Civil Suit No. 265/2021 seeking specific performance of the contract contained in the MoU dated 21st January, 2019.

3.6 In the said suit, the Defendant No. 1 had moved an application for rejection of the plaint. By an order dated 22nd

February, 2024, the learned Civil Judge, Bhiwandi rejected the plaint in the said suit opining that, there was no cause of action for the plaintiff firm to institute the suit when the contract was executed by and between Prabhudas Patel, the proprietor, and Defendant No. 1.

3.7 The plaintiff has instituted the instant commercial suit invoking the provisions contained in Rule 13 of Order VII. The plaintiff has sought specific performance of the MoU dated 21st January, 2019; a declaration that the conveyance executed by Defendant No. 1 in favour of the Defendant No. 2, is null and void; cancellation of the said instrument and the consequential reliefs including compensation and injunction, and, in the alternative, for refund of the consideration paid and the expenses incurred by the plaintiff alongwith interest.

3.8 In the said commercial suit, the petitioner filed application for rejection of the plaint contending *inter alia* that, it has already been determined that, the plaintiff has no cause of action qua Defendant No. 2 to seek relief of specific performance. Thus, the instant commercial suit was also sans any cause of action and, resultantly, the plaint was liable to be rejected under clause (a) of Rule 11. Secondly, the relief claimed in the suit appeared to be

clearly barred by law of limitation. Since the suit was instituted beyond three years of the execution of Memorandum of Understanding dated 21st January, 2019 and even three years beyond the termination of the contract by the Defendant No. 1, the suit was *ex facie* beyond the period of limitation. Thirdly, since the order of rejection of the plaint in Special Civil Suit No. 265/2021 passed by the learned Civil Judge has attained finality, the plaintiff could not have again instituted the suit on the same cause of action.

3.9 The plaintiff contested the application.

3.10 By the impugned order the learned District Judge rejected the application observing *inter alia* that, the rejection of the plaint under Order VII Rule 11 of the Code, does not preclude the plaintiff from instituting a fresh suit on the same cause of action as it is explicitly permitted by Rule 13 of Order VII. The challenge to the tenability of the suit on the ground of bar of limitation was repelled observing that, the questions as to whether the time was essence of the contract and the suit was barred by limitation under Article 54 of the Limitation Act, appeared to be mixed questions of law and facts and, thus, the issue of limitation was required to be adjudicated at the trial. At any rate, since the

plaintiff came to know about the conveyance executed by the Defendant No. 1 in favour of the Defendant No. 2, on 19th June 2021, the institution of the suit appeared to be within the period of limitation.

4. Being aggrieved, the petitioner has invoked the writ jurisdiction.

5. I have heard Mr. Godbole, the learned Senior Advocate for the petitioner, and Mr. Deepan Dixit, the learned Counsel for the Respondent No. 1, at some length. The learned Counsel for the parties took the Court through the pleadings in the previous suit and the instant suit and the orders passed by the learned Civil Judge rejecting the plaint and the impugned order.

6. Mr. Godbole, the learned Senior Advocate for the petitioner would submit that, the finding of the learned Civil Judge in the previous suit that there was no cause of action for the plaintiff firm to institute the suit for specific performance of the contract contained in the MoU, governs the plaint in the second suit as well. The fact remains that, when the purported MoU was executed, the plaintiff firm was not in existence. The purported MoU was between Prabhudas Patel, as a proprietor, and the Defendant No. 1. The said position would not alter by the

subsequent formation of the plaintiff as a partnership firm. Thus, the plaintiff firm even now has no cause of action to institute the suit.

7. Secondly, Mr. Godbole urged with a degree of vehemence that instant suit is *ex facie* barred by limitation, even if it is assumed that, the plaintiff could institute a fresh suit by invoking the provisions contained in Order VII Rule 13 of the Code. Mr. Godbole further urged that, the second suit is but an abuse of process of the Court. Thus, the learned District Judge committed a manifest error in rejecting the application for the rejection of the plaint, submitted Mr. Godbole.

8. To buttress these submissions, reliance was placed by Mr. Godbole on the judgments in the cases of *Saleem Bhai & ors. Vs. State of Maharashtra & ors.*¹, *Sopan Sukhdeo Sabale & ors. Vs. Assistant Charity Commissioner & ors.*², *T. Arivandandam Vs. T. V. Satyapal & anr.*³, *Dahiben Vs. Arvindbhai Kalyanji Bhanusali & ors.*⁴, *Daryao & ors. Vs. State of U. P. & ors.*⁵, *Mathura Prasad Bajoo Jaiswal & ors. Vs. Dossibai N. B. Jeejeebhoy*⁶, *State of U. P.*

1 2003 (1) SCC 557

2 2004 (3) SCC 137

3 1977 (4) SCC 467

4 2020 (7) SCC 366

5 1961 SCC OnLine SC 21

6 1970 (1) SCC 613

Vs. Nawab Hussain⁷, Indian Evangelical Lutheran Church Trust Association Vs. Sri Bala & Co.⁸, and K K Modi Vs. K N Modi⁹.

9. In opposition to this, Mr. Deepan Dixit, the learned Counsel for the Respondent No. 1/plaintiff would urge that, under the terms of the MoU itself the Defendant No. 1 had agreed to execute the conveyance in favour of Prabhudas Patel or his nominee. Therefore, the very premise of the application that there was no cause of action for the plaintiff firm, is completely flawed. Secondly, it was submitted that, the application for rejection of the plaint on the ground of *res judicata* which was sought to be tacitly urged, was wholly misconceived. Rule 13 of Order VII explicitly provides that, the plaintiff is not precluded from instituting a fresh suit even when a plaint is rejected on any of the grounds under Rule 11. Mr. Dixit forcefully submitted that, the learned District Judge was wholly justified in recording a finding that, in the facts of the case, the question as to whether the suit is barred by limitation is indeed a mixed question of facts and law. Thus, the instant petition does not merit countenance.

10. The aforesaid submissions now fall for consideration.

7 1977 (2) SCC 806

8 2025 SCC OnLine SC 48

9 (1998) 3 SCC 573

11. To start with, there does not seem much controversy over the elementary facts and the contractual relationship between the parties to the lis. The facts that M/s Binani Industries Ltd (D1) was the holder of the subject land and by a resolution dated 26th January 2018, the Board of Directors of D1 had resolved to sell the suit properties, are not in contest. Secondly, the execution of the MoU dated 21st January 2009 by D1 in favour of Prabhudas Patel, the proprietor of Maharashtra Wood Based Industrial Estate, incorporating the terms of the contract between D1 and Prabhudas Patel is not in dispute. The acknowledgment of a sum of Rs. 21 lakhs towards non-refundable deposit, to be adjusted towards the consideration, after the ascertainment of area and the total consideration at the mutually agreed rate per acre, is borne out by the said MoU. The balance consideration was to be paid on the completion of the transaction by execution of a registered Deed of Conveyance by the Vendor in favour of the Purchaser or his nominee within 60 days.

12. By and large, it is not in dispute, on 31st March 2021, D1 executed a Conveyance in favour of D2, and it was registered on 11th May 2021. Asserting that the Plaintiff became aware of the said transaction in the month of April 2021, the Plaintiff had

instituted SCS No. 265 of 2021 on 26th April 2021. Incontrovertibly, the Plaint in the said Suit was rejected by the learned Civil Judge by an order dated 22nd February 2024. In the meanwhile, the Plaintiff firm came to be registered with the Registrar of Firms on 28th January 2022. The instant suit came to be instituted on 15th April 2024.

13. The learned Civil Judge had rejected the Plaint in SCS No. 1041 of 2023 (old SCS No. 265 of 2021), on the ground that the Plaintiff-firm had no cause of action as the MoU was executed by D1 in favour of Prabhudas Patel in his capacity of the proprietor of Maharashtra Wood Based Industrial Estate, and not as a partner of the Plaintiff-firm. It was not the case of the Plaintiff that after the execution of the MoU, the proprietary concern of Prabhudas Patel amalgamated into the Plaintiff partnership firm.

14. Undoubtedly, the said order of rejection of the Plaint has attained finality. However, it is necessary to note, at the outset itself that, the Application for rejection of the plaint in the instant Commercial Suit on the ground that the order of rejection of the plaint in the prior suit operates as res judicata and precludes the Plaintiff-firm from instituting fresh suit, was completely misconceived.

15. In view of the clear and explicit provisions contained in Order VII Rule 13 of the Code that the rejection of the Plaint on any of the grounds mentioned in Rule 11 of Order 7 of the Code shall not of its own force preclude the Plaintiff from presenting a fresh Plaint in respect of the same cause of action, the order rejecting the Plaint, neither operates as res judicata nor precludes the Plaintiff from instituting a fresh suit on the same cause of action.

16. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of **Delhi Wakf Board Vs Jagdish Kumar Narang**,¹⁰ wherein it was enunciated that a suit filed on the same cause of action, subsequent to the rejection of the Plaint, in the previous suit under Rule 11 is not liable to be dismissed on the ground of being barred by order rejecting the Plaint in the earlier suit.

17. Even otherwise, it is well-recognized that a Plaint cannot be rejected under the provisions of Order 7 Rule 11 of the Code on the ground that it is barred by the principles of res judicata. A profitable reference in this context can be made to the decision of

¹⁰ (1997) 10 SCC 192.

the Supreme Court in the case of **Shrihari Hanumandas Totala Vs Hemant Vithal Kamat and Ors**,¹¹ wherein the Supreme Court has enunciated in clear and explicit terms that a plea for rejection of the Complaint on the ground of *res judicata* would be beyond the scope of Order VII Rule 11(d), where only the averments in the Complaint will have to be perused.

18. Mr. Godbole, the learned Senior Advocate, for the Petitioner would urge that notwithstanding non-applicability of the ground of *res judicata*, the Complaint in the instant commercial suit is required to be rejected on parity of reasons for non-disclosure of a cause of action.

19. It was submitted that the foundational facts of the Plaintiffs claim remain intact. The mere fact that the Plaintiff-firm came to be subsequently registered as a partnership firm does not alter the basic premise of the suit. The edifice of the suit is still the MoU dated 21st January 2019 which was executed by D1 in favour of the Prabhudas Patel as the proprietor of Maharashtra Wood Based Industrial Estate. Thus, once it was found that there was no cause of action for the institution of the previous suit, despite the

11 (2021) 9 SCC 99.

registration of the plaintiff as a partnership firm there would still be no cause of action for the fresh suit as well.

20. Refraining from venturing into the exercise of examining the legality, propriety and correctness of the order passed by learned Civil Judge rejecting the Plaint in the previous suit, this Court proposes to examine the averments in the Plaint to appreciate the aforesaid submissions on behalf of the Petitioner.

21. The fundamental principles which govern the consideration at the stage of the rejection of the Plaint as expounded in the cases of **Saleem Bhai Vs. State of Maharashtra (supra)**, **Sopan Sukhdeo Sable Vs. ACC (supra)**, **T. Arivandandam Vs. T V Satyapal (supra)** and **Dahiben Vs. Arvindbhai (Supra)**, are too well-settled to need reiteration. Appraising the averments in the Plaint as a whole, along with the documents annexed to the Plaint, which are only germane, at the stage of consideration of the Application for rejection of the Plaint, this Court finds that the Plaintiff has categorically asserted that though the initial MoU was by and between Prabhudas Patel, in the later's capacity as the proprietor of Maharashtra Wood Based Industrial Estate, and D1 and the initial deposit of Rs. 21 lakhs was transmitted from the personal account of Prabhudas Patel, yet, under a month of the

said MoU, Prabhudas Patel formed a partnership firm with his son, and, thereafter, the consideration of Rs. 59,40,000/- flowed from the account of the partnership firm, Defendant No. 1 had acknowledged the receipt of the consideration from the partnership firm, the Board of Directors of D1 had passed a Resolution appointing Mahesh Thakur to represent D1 in the proceeding to adjudicate the stamp duty and delivered signed draft Sale Deed and Agreement for Sale to be executed in favour of the Plaintiff partnership firm, clearly recording that conveyance was to be made in favour the partnership firm.

22. The substance of the Plaintiff's claim is that both the parties including Prabhudas Patel, the proprietor of Maharashtra Wood Based Industrial Estate, had agreed and understood that the transaction was to be by and between Defendant No.1 and the Plaintiff firm. Subsequently, there was a refusal on the part of Defendant No.1 to perform its part of the contract, which was manifested in the execution of the Sale Deed by Defendant No.1 in favour of Defendant No.2 - Petitioner on 31st March 2021.

23. The aforesaid tenor of the Plaintiff's case is *prima facie* borne out by the documents which are annexed to the Plaint. Thus, at this juncture, it would be rather difficult to accede to the

submission of Mr. Godbole that the averments in the Plaint, even if taken at their face value, do not disclose a cause of action. Nor can it be said to be a case of clever drafting so as to create an illusion of a cause of action, where none exists.

24. Even if the case of Defendant No.2 that initially the transaction was between Prabhudas Patel, in his capacity as the proprietor of Maharashtra Wood Based Industrial Estate and Defendant No.1, is taken at par, yet, the case set up by the Plaintiff cannot be said to be incompatible with the partnership firm acquiring interest to lay a claim for specific performance of the contract for the sale of suit property.

25. Firstly, it is pertinent to note, under the MoU Defendant No.1 had covenanted to execute conveyance in favour of Prabhudas Patel or his nominee. Secondly, the legal implications of Prabhudas Patel bringing his rights under the MoU as a capital of the partnership firm may also be required to be examined.

26. Section 14 of the Indian Partnership Act, 1932 specifies what constitutes the property of the firm. It provides, subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought

into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business. It further provides that, unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

27. In view of the aforesaid concept of the property of the firm, especially the latter part of Section 14, which incorporates a deeming provision, namely, the property and rights and interests in the property acquired with money belonging to firm, the assertions in the Complaint that as and by way of part consideration, a sum of Rs. 59,40,000/- was paid to Defendant No.1 from the account of the Plaintiff firm (which find support in the extract of the statement of account of the firm (Exhibit “6”) and receipt (Exhibit “7”), annexed to the Complaint), the Plaintiff-firm may legitimately assert a claim that the contract for sale evidenced by MoU creates an obligation annexed to the ownership of the suit property within the meaning of Section 40 of the Transfer of Property Act, 1882, enforceable against Defendant Nos. 1 and 2; transferee of Defendant No.1.

28. In this context, it could also be urged that Prabhudas Patel had brought into the stock of the partnership firm the right to enforce the said contractual obligation of Defendant No.1 as his capital. It may then assume the character of the property of the partnership firm. In law, the property belonging to a partner, upon his entering into a partnership, may become property of the partnership, if there is an Agreement either express or implied that the property was, under the Agreement of partnership to be treated as the property of the partnership.

29. In the case of **Addanki Narayanappa And Anr Vs Bhaskara Krishtappa And Ors**,¹² it was enunciated that the whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital, money or even property including immovable property. Once that is done, whatever is brought in, would cease to be the trading asset of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property.

12 AIR 1966 SC 1300.

30. It is pertinent to note, in the case at hand, there does not seem any dispute inter se partners of the Plaintiff firm as regards the character of the right to claim specific performance of the contract contained in the MoU. On the contrary, the Plaintiff proceeds on the premise that the said contract was executed for and on behalf of the partnership firm.

31. Resultantly, the submission on behalf of the Petitioner that the Plaintiff in the instant suit also deserves to be rejected on the count of absence of cause of action in favour of the Plaintiff firm qua the Defendants, cannot be accepted.

32. As the second limb of the submission, Mr. Godbole would urge that the Plaintiff in the instant suit would be barred by law of limitation, as the MoU was executed on 21st January 2019 and the instant suit came to be instituted on 15th April 2024. Suffice to note in paragraph 11 of the Plaintiff, the Plaintiff has made clear and categorical averments to demonstrate as to how the suit is not barred by law of limitation.

33. Though in the MoU a period of 60 days was stipulated for the performance of the contract, with a condition super-added that the time was to be the essence of the contract, yet, the

conduct of the parties, as manifested from the record, in passing the resolution authorising Mr. Thakur to participate in the proceeding before the Registrar of Assurances for adjudication of the stamp duty, forwarding the signed draft conveyance and obtaining the permission of the Competent Authority for effecting the sale, *prima facie* demonstrate that the question as to whether there was “date fixed” for the performance of the contract or the period of limitation would begin to run from the date the Plaintiff had notice of refusal of performance, is rooted in the thickets of facts. Which part of the Article 54 of the Limitation Act would govern the suit would be a mixed question of facts and law.

34. Having examined the legality and correctness of the impugned order, in the light of the aforesaid material, this Court does not find that the impugned order suffers from such jurisdictional error, patent illegality or perversity which stares in the face which would warrant exercise of the writ jurisdiction under Article 227 of the Constitution of India despite the interdict contained in Section 8 of the Commercial Courts Act, 2015.

35. The Petition thus deserves to be dismissed.

36. Hence, the following order:-

:: O R D E R ::

- (i) The Writ Petition stands dismissed with costs.
- (ii) Rule discharged.

[N. J. JAMADAR, J.]