

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 506 OF 2025

Devchand Khimji Gala and Anr ..Applicants
Versus
Nemchand Jevant Furia & Ors ...Respondents

Mr. Bhavik Lalan, with Vibhor Jain and Nikhil Mhatre, i/b GP &
Associates, for the Applicant.

CORAM: N. J. JAMADAR, J.
DATE : 9th JUNE 2026

ORDER:

1. This Civil Revision Application is directed against an order dated 21st June 2025 passed by the learned Judge, City Civil Court in Notice of Motion No. 4815 of 2022, in SC Suit No. 1786 of 2016, whereby the Notice of Motion taken out by Applicant Nos. 1 and 2, for rejection of the Plaint in Suit No. 1786 of 2016, under the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 (“the Code”), primarily on the ground of the suit being barred by law of limitation, came to be rejected.

2. Respondent No.1 instituted the suit seeking a declaration that Respondent No.1 is the lawful and absolute owner of the suit premises, i.e., Shop Premises No. 28/31, situated at Lakhpat Building, Jacob Circle, Mumbai, (“the subject Premises”) and a direction to the Mumbai

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Building (Repairs and Reconstruction Board), MHADA, Mumbai, to re-allot the subject premises to the plaintiff after evicting the Defendant Nos. 1 and 2, who were stated to be in the unlawful occupation of the suit premises.

3. The substance of the claim of the Plaintiff is that the Plaintiff's father was the original holder of the shop premises bearing Shop No. 28/554-A and Shop No. 31/556-B, situated at Lakhpati Building, Dr E Moses Road, Jacob Circle, Mumbai. The father of the Defendants was the maternal uncle of the Plaintiff. The father of the Plaintiff had allowed the father of Defendant Nos. 1 and 2 to join in the business and started a firm M/s Jevat Ratansey and Company. The Defendants on the basis of the forged and fabricated documents obtained the possession of the subject premises in the redeveloped building in lieu of the shop premises bearing No. 31/556-B. Hence the Plaintiff lodged a report with the police and instituted the suit for declaration and re-allotment of the shop premises to the Plaintiff and a direction to Defendant Nos. 1 and 2 to vacate the subject premises and for the delivery of possession thereof to the Plaintiff.

4. Mr. Bhavik Lalan, the learned Counsel for the Applicants, submitted that the learned Judge, City Civil Court committed a grave error in law in rejecting the Notice of Motion opining that the question of limitation was a mixed question of law and fact and warranted

adjudication at the trial. In view of the clear and unequivocal relinquishment of the rights in the shop premises by Laxmibai Ratansey, the mother of the Plaintiff, and the Plaintiff by affirming the Affidavits in the year 1981 and 2004, the Suit for declaration instituted in the year 2016 was ex-facie barred by law of limitation.

5. Inviting attention of the Court to the averments in the Plaint, especially, paragraphs 13 and 16 thereof, Mr. Lalan would urge that from the own showing of the Plaintiff, the relinquishment of the rights in the shop premises was indisputable. Yet, the learned Judge, City Civil Court declined to exercise the power under Order 7 Rule 11 of the Code.

6. Undoubtedly, if the suit is ex-facie barred by the law of limitation, the City Civil Court would be empowered to reject the Plaint under the provisions of Order 7 Rule 11(d) of the Code, as it is the duty of the Court to nip in the bud a sham and fruitless litigation. **(Shri Mukund Bhavan Trust and Ors. V/s. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Anr¹ and Dahiben Vs Arvindbhai Kalyanji Bhanusali (Gajra) Dead through LRs & Ors²)**

7. However, it is well recognized that, more often than not, the question of limitation is a mixed question of law and facts. If the Court upon perusal of the averments in the Plaint is not in a position to record

1 2024 SCC OnLine SC 3844.

2 (2020) 7 SCC 366.

a categorical finding that the suit is ex-facie barred by the law of limitation, the issue of limitation must await adjudication at the trial.

8. In the case at hand, first and foremost, it is necessary to note that there is no denial of the fact that the father of the Plaintiff had the tenancy rights in the shop premises which was demolished and upon redevelopment the subject premises came to be allotted to Defendant Nos. 1 and 2. The case of Defendant Nos. 1 and 2 is that the said right was relinquished in favour of Defendant Nos. 1 and 2.

9. Reliance on the Affidavits purportedly sworn by Laxmibai, the mother of the Plaintiff, and the Plaintiff to bolster up the case of relinquishment of the tenancy rights appears debatable. The relinquishment of rights in immovable properties cannot be by way of affirming the Affidavits. Moreover, the Plaintiff has assailed the said Affidavits as forged and fabricated documents. Thus, the question whether there was relinquishment of the tenancy rights in the shop premises enters into the arena of controversy. That controversy can only be resolved by adjudication in the suit, after the parties lead evidence.

10. Secondly, in paragraph 17 of the Plaint, there is a categorical averment that the notice to vacate the shop premises was given by Defendant No.3 to the father of the Plaintiff in the year 1988. This implies that despite the purported Affidavit affirmed by Laxmibai and the Plaintiff, the notice under Section 77(b) of the Maharashtra Housing

and Area Development Act, 1976, was issued to the father of the Plaintiff.

11. In view of the aforesaid *prima facie* material to show the existence of the antecedent rights in the shop premises, the question of limitation premised on the relinquishment of the rights in the shop premises in lieu of which the subject premises, came to be allotted to Defendant Nos. 1 and 2, hinges upon the determination on the point of the very legality and validity of the relinquishment set up by Defendant Nos. 1 and 2. That is plainly a matter of defence of Defendant Nos. 1 and 2. It is trite at the stage of consideration of the Application for rejection of the Plaint, the defence of the Defendants is not at all germane.

12. Viewed through the aforesaid prism, the learned Judge, City Civil Court was justified in holding that the question of limitation appeared to be a mixed question of law and facts. This Court does not find any legal infirmity in the impugned order. Resultantly, the Application stands rejected.

13. Hence, the following order:

: O R D E R :

The Civil Revision Application stands rejected.

[N. J. JAMADAR, J.]