

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 184 OF 2026

Subhan Mohd Husen Patel

...Applicant

Versus

Shaheen Firoj Tai

...Respondent

Mr. Vilas Mali, for the Applicant.

Mr. V. K. Gupta, a/w Uttara Sarkar and Rushikesh Thakur, for
the Respondent.

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CORAM: N. J. JAMADAR, J.
DATED: 24th MARCH, 2026

Order:-

1. Heard the learned Counsel for the parties.
2. This revision application is directed against an order passed by the learned Civil Judge, Panvel, whereby an application preferred by the applicant – defendant for rejection of the plaint under the provisions of Order VII Rule 11(b)(c) and (d) of the Code of Civil Procedure, 1908 (“the Code”) came to be rejected.
3. The respondent - plaintiff has instituted a suit for specific performance of a contract to sell immovable properties, i.e., Flat Nos.102 and 202. Ayesha Apartments, situated at village

Owe, Taluka Panvel, District Raigad. ("the suit flats"). The respondent claims that the defendant had agreed to sell the suit flats in the year 2014. A Memorandum of Understanding was executed in respect of Flat No.202 on 4th August, 2014. The defendant had put the plaintiff in possession of Flat No.102 in the month of August 2015. Although the agreed consideration was parted with by the plaintiff, the defendant did not execute a registered instrument in favour of the plaintiff in respect of Flat No.102. The defendant neither executed a registered instrument in respect of Flat No.202 nor delivered possession thereof. Hence, the suit for specific performance of the contract or, in the alternative, for the payment of the amount of Rs.79,20,450/- as per the statement of claim.

4. The defendant filed an application for rejection of the plaint on myriad grounds. By the impugned order, the learned Civil Judge was persuaded to reject the application observing, *inter alia*, that the averments in the plaint did disclose a cause of action, the question whether the suit was barred by limitation, was a mixed question of law and facts, and the contentions of the defendant that a suit for specific performance was not maintainable on the basis of an unregistered instrument and in view of the bar contained in Section 92 of the

Evidence Act, were the matters of merit and did not furnish a ground for rejection of the plaint.

5. Mr. Mali, the learned counsel for the applicant, submitted that the Memorandum of Understanding executed between the parties was in respect of Flat No.202 only. Thus, the claim of the plaintiff for the specific performance of the contract to sell Flat No.102 was wholly untenable and bereft of any cause of action. At any rate, the suit for specific performance of the contract, even if assumed to arise out of the said MoU, was clearly barred by limitation. Thus, the learned Civil Judge committed an error in rejecting the application for rejection of the plaint. Reliance was placed by Mr. Mali on the judgments of the Supreme Court in the case of *Shri Mukund Bhavan Trust and others vs. Shriman Chhatrapati Udayan Raje*¹ and *Pydi Ramana @ Ramulu vs. Dvarasety Manmadha Rao*².

6. Mr. Gupta, the learned Counsel for the respondent, supported the impugned order.

7. At the stage of the consideration of the prayer for the rejection of the plaint under the provisions of Order VII Rule 11 of the Code only the averments in the plaint and the documents

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

2 Civil Appeal/434/2013, dtd.10/7/2024.

annexed thereto are required to be considered. The contentions in the application for rejection of the plaint and the defence of the defendant are not at all germane for the determination of an application for rejection of a plaint. Undoubtedly, the plaint is required to be read in a meaningful manner. If, upon a careful reading of the plaint, the court finds that an illusion of a cause of action is sought to be created where none exists or that the claim which is *ex facie* barred by the law of limitation or any other law is sought to be instituted by camouflaging the real character of the suit, or by suppressing the date of accrual of the cause of action, the Court would be justified in exercising the power to reject the plaint so that a fruitless and abortive litigation is nipped in the bud.

8. The bar of limitation is, more often than not, a mixed question of facts and law. However, where the Court, upon a correct reading of the plaint, finds that the suit is *ex facie* barred by the law of limitation, the rejection of the plaint would be in order. In the case of ***Shri Mukund Bhavan Trust*** (supra), the Supreme Court enunciated that limitation is a mixed question of law and facts, yet, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the court should not be hesitant in granting the relief.

9. On the aforesaid touchstone, reverting to the facts of the case at hand, as noted above, the defendant sought the rejection of the plaint on myriad grounds. Most of the grounds touch upon the merits of the matter, like, the alleged falsity in the claim of the plaintiff and the untenability of the suit on the basis of an unregistered agreement for sale.

10. On the aspect of the bar of limitation, suffice to note that, from a meaningful reading of the plaint, the Court does not find that there was clear knowledge of refusal of performance of the contract on the part of the plaintiff. On the contrary the plaintiff claimed that she was put in possession of one of the flats in the year 2015 and the defendant kept on assuring that the instruments would be executed. Eventually, in the month of February, 2023, the defendant virtually refused to execute the instruments in respect of both the flats and deliver possession of Flat No.202. On 7th February, 2023, the defendant threatened to forcibly dispossess the plaintiff from Flat No.102.

11. In the light of the aforesaid averments in the plaint and the documents which were annexed to the plaint to substantiate the averments therein, the question as to whether the suit is barred by law of limitation appears to be rooted in facts and, thus, warrants determination at the trial. The learned Civil

Judge, thus, committed no error in declining to exercise the jurisdiction to reject the plaint under Order VII Rule 11 of the Code.

12. The defendant claims that there was no agreement for the sale of Flat No.102. The agreement for the sale of Flat No.202 was terminated and another flat was sold by the defendant to the plaintiff. All these grounds are matters of defence, and were rightly eschewed from consideration by the learned Civil Judge while considering the application for the rejection of the plaint.

13. In any event, if a part of cause of action survives even in respect of the one of the properties, the suit must proceed to trial. A useful reference, in this context, can be made to the judgments of the Supreme Court in the cases of *Sejal Glass Limited vs Navilan Merchants Private Limited*³ and *Madhav Prasad Aggarwal and another vs. Axis Bank Limited and another*⁴, wherein, after adverting to the various judgments of the High Courts, it was enunciated that if the plaint survives against certain defendants and/or properties, Order VII Rule 11(d) will have no application at all, and the suit as a whole must then proceed to trial.

3 (2018) 11 SCC 780.

4 (2019) 7 Supreme Court Cases 158.

14. Resultantly, since the impugned order suffers neither from any jurisdictional error nor material irregularity, this Court is not inclined to interfere with the impugned order.

15. The revision application stands disposed.

[N. J. JAMADAR, J.]