IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 308 OF 2026

S.K. Sarwade ..Applicant
Versus
S.K. Paithankar and Anr …Respondents

Mr. Mayur D Sapkale, for the Applicant.

CORAM: N. J. JAMADAR, J.
DATE : 16th JUNE 2026

ORDER:

1. Heard Mr Mayur D Sapkale, the learned Counsel for the Applicant.

2. This Civil Revision Application is directed against an order passed by the learned Judge, City Civil Court in Notice of Motion No. 1642 of 2026 in SC Suit No. 1047 of 2014, whereby the Notice of Motion taken out by the Applicant-Defendant No.1, for rejection of the Plaint under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908 ("the Code"), came to be rejected.

3. Respondent No.1-Plaintiff claimed to be the allottee of Room No. 8294, Building No. 208, situated at Kannamwar Nagar No.1, Vikhroli (East), Mumbai – 400 083.

4. Defendant No.1 had allegedly agreed to purchase the suit premises for a sum of Rs.3,25,000/-. Defendant No.1 paid a sum of Rs.1,50,000/- only. However, Defendant No.1 allegedly obtained a provisional receipt to fraudulently indicate that the suit premises was agreed to be sold for the consideration of Rs.1,50,000/- only. Defendant No.1 committed default in payment of the balance consideration despite repeated demands. Eventually, Defendant No.2-society unlawfully transferred the membership of the society in favour of Defendant No.1 by passing a purported Resolution in the Annual General Body Meeting dated 11th August 1996, though the suit premises was not lawfully transferred in favour of Defendant No.1.

5. Hence, the Plaintiff, as advised had filed a dispute before the Co-operative Court being Dispute Case No. CC/III/1175/1996, for a declaration that the Defendant No.2 had illegally admitted Defendant No.1 as a member of the Defendant No.2-society, and that the said Resolution was illegal and bad-in-law and for the consequential reliefs. The said Dispute Case was dismissed by the Co-operative Court by a judgment and order dated 21st October 2012.

6. An Appeal preferred thereagainst by the Plaintiff, being Appeal No. 131 of 2015, also met the same fate. The Appellate Court, however, opined that the question as to whether the receipt of payment constituted a sale or Agreement for Sale or whether Defendant No.1

was entitled to protect possession on the basis of the said documents can only be decided by the Civil Court and that the Co-operative Court had no jurisdiction to entertain the dispute.

7. The Plaintiff thus instituted the instant Suit seeking a declaration, *inter alia,* that there was no concluded contract between the Plaintiff and Defendant No.1, the payment receipt did not transfer the title over the suit premises to Defendant No.1 and the consequential reliefs of possession and rectification of the record maintained by Defendant No.2-society. The Plaintiff professed to seek benefit of the provisions contained in Section 14(1) of the Limitation Act, 1963, on account of the institution of the proceedings before the Co-operative Courts.

8. Defendant No.1 resisted the Suit by filing a Written Statement. Issues were settled on 11th February 2019. When the matter was posted for cross-examination of the Plaintiff's witness, the Applicant took out the Notice of Motion seeking rejection of the Plaint on the ground that the Plaint did not disclose a cause of action and the Suit was barred by law of limitation.

9. The learned Judge, City Civil Court was of the view that the questions as to whether the Plaintiff was entitled to the benefit of the provisions contained in Section 14(1) of the Limitation Act and whether the suit was barred by the law of limitation were mixed questions of fact and law and, therefore, the Plaint can not be rejected on the said ground.

10. Mr. Sapkale, the learned Counsel for the Applicant, would urge that, the Plaintiff had not only acknowledged the receipt of the entire consideration but had also given a no objection for the transfer of membership in the Defendant No.2-society. The payment receipt in respect of which a declaration was sought by the Plaintiff was executed on 28th June 1992. Thus, the Suit was ex-facie barred by the law of limitation. The learned Judge, City Civil Court, therefore, was in error in dismissing the Notice of Motion.

11. I have carefully perused the averments in the Plaint and the documents annexed to the Plaint, which can only be taken into account at the stage of consideration of the prayer for rejection of the Plaint.

12. First and foremost, the submission premised on the transfer of the title over the suit premises on the basis of the purported payment receipt which is an unregistered instrument is fraught with infirmities. The tenor of the Plaint is that, the Plaintiff is the owner of the suit premises and the title has not passed on the basis of the purported payment receipt which is not a registered instrument. Thus, the claim of the Defendant that the Plaint does not disclose a cause of action cannot be countenanced.

13. On the aspect of limitation as well, the view of the trial Court appears sustainable.

14. As noted above, the Plaintiff filed a dispute before the Co-operative Court assailing the legality and validity of the Resolution passed by Defendant No.2-society, transferring the membership of the society in favour of Defendant No.1 and the consequent actions. The Co-operative Court as well as the Appellate Court, were of the view that the Co-operative Court lacked jurisdiction and that the question of transfer of title on the basis of the purported payment receipt was required to be determined by the Civil Court. In such a situation, the endeavour of the Plaintiff to seek the benefit of the provisions contained in Section 14 of the Limitation Act, cannot be brushed aside at the threshold.

15. It is trite, the plea for rejection of the Plaint is in the nature of demurrer. In paragraph 31 of the Plaint, the Plaintiff has sought to explain the circumstances on account of which he would be entitled to claim the benefit of the provisions contained in Section 14 of the Limitation Act.

16. In the case of **Consolidated Engineering Enterprises Vs Principal Secretary, Irrigation Department,**[1] the Supreme Court has postulated the conditions which are required to be satisfied before Section 14 could be pressed into service, as under:

1 (2008) 7 SCC 169.

> "21. … … …
>
> (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
>
> (2) The prior proceeding had been prosecuted with due diligence and in good faith;
>
> 3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
>
> (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
>
> (5) Both the proceedings are in a court."

17. *Prima facie* the averments in the Plaint on the point of limitation seek to address the aforesaid conditions.

18. In the aforesaid case the Supreme Court has further explained that the provisions of Section 14 of the Limitation Act, must be interpreted and applied in a manner that advances the cause of justice rather than interdicting the proceedings.

19. In the case of **Oil And Natural Gas Corporation Limited Vs Modern Construction And Company,**[2] the Supreme court explained the import of Section 14 of the Limitation Act as under:

> "16. Section 14 of the Limitation Act provides protection against the bar of limitation to a person bonafidely presenting his case on merit but fails as the court lacks inherent

2 (2014) 1 SCC 648.

> jurisdiction to try the suit. The protection also applies where the plaintiff brings his suit in the right court, but is nevertheless prevented from getting a trial on merits because of subsequent developments on which a court may loose jurisdiction because of the amendment of the plaint or an amendment in law or in a case where the defect may be analogous to the defect of jurisdiction.
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> 17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.

20. The aforesaid being the position in law, the question of the suit being barred by he law of limitation appears to be a mixed question of fact and law. The applicability of the provisions contained in Section 14 of the Limitation Act, would be a matter for adjudication at the trial. Thus, the impugned order does not suffer from any jurisdictional error or material irregularity so as to warrant interference in exercise of the revisional jurisdiction.

21. The Civil Revision Application thus stands dismissed.

22. By way of abundant caution, it is clarified that the aforesaid observations were confined to test the legality, propriety and correctness of the order on the Notice of Motion to reject the Plaint and the trial Court shall not be influenced by any of the aforesaid observations while adjudicating the suit, including the issue of the bar of limitation.

[N. J. JAMADAR, J.]