



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO.13 OF 2025

APPLICANT
(Org. Defendants)

:- Shri Vasant S/o Narayan Warjekar,
Aged-62, Occ.Business,
R/o Building No.A-7, Plot No.T-4
Hazaripahad, Katol Road, Nagpur.

..VERSUS..

RESPONDENT
(Org. Plaintiff)

:- Shri Ashok S/o Narayan Warjekar,
Aged 59 years, Occ. Business,
R/o Near Viththal Mandir, Bajar Chowk,
Nagbhid, Tah.-Nagbhid, District-Chandrapur.

Mr. S.P. Kshirsagar, Advocate for Petitioner.
Mr. S.Y. Deopujari, Advocate for Respondent.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **15/04/2026**

JUDGMENT :

1. The present revision application takes exception to the order dated 15.01.2025 passed by the learned Civil Judge Junior Division, Nagbhid, on application at Exhibit 21, refusing to reject the plaint. The revision petitioner is the original defendant. The suit is for specific performance of contract.

2. The case of the respondent/plaintiff is that they had entered into an oral agreement with the defendant to purchase the

suit property on 07.01.2008 and that the said oral agreement was subsequently reduced in writing on 24.07.2008. It is the case of plaintiff that he has made payment of entire sale consideration to the defendant from time to time. The plaintiff has averred that he is placed in possession of the suit property pursuant to the agreement and are accordingly in physical possession thereof. The plaintiff's claim is that in August, 2023 they learnt that the defendant was contemplating transfer of the suit property to the some third persons, as a consequence of which, they filed an application dated 31.08.2023 with the Municipal Council for mutation of their name and also issued a notice dated 08.09.2023 to the defendant seeking specific performance of contract. It is stated that notice dated 08.09.2023 was refused on 09.09.2023 and in this backdrop, suit for specific performance is filed on 13.09.2023.

3. The learned advocate for the revision petitioner /defendant contends that the suit is clearly barred by limitation, inasmuch an agreement entered into the year 2008 is sought to be enforced in a suit filed in the year 2023. In order to adjudicate the said contention, Article 54 of the Limitation Act will have to be considered. Article 54 prescribes limitation of three years for filing of suit for specific performance of contract. If the date is fixed for

execution of sale deed, then limitation commences from the said date and in case where a date is not so fixed, the limitation commences from date of refusal. It is also well settled that while dealing with an application under Order VII Rule 11 of the Code of Civil Procedure, the plaint averments are required to be considered on their face value and the defence of the defendant cannot look into. Perusal of the agreement dated 24.07.2008 indicates that the parties did not fix any date for execution and registration of sale deed. The plaint also does not recite that any such date is fixed.

4. According to the plaintiff, the cause of action arose around 28.08.2023, when he learnt about intention of the defendant to create third party interest over the suit property, disregarding the agreement. The plaintiff has stated that application for mutation with Municipal Council was filed on 31.08.2023, which was followed by a notice for specific performance on 08.09.2023. The suit as stated above, is filed on or about 30.09.2023. The suit is thus filed within limitation from the date of refusal.

5. It is reiterated that this observations is made on the basis of plaint averments, disregarding the version of the revision petitioner/defendant.

6. The next contention of Mr. Kshirsagar, learned advocate for the revision petitioner/defendant is that the defendant had never entered into any oral agreement and has also not executed the alleged agreement dated 24.07.2008. This is obviously a matter of defence, which cannot be looked into while dealing with an application under Order VII Rule 11 of the CPC.

7. Mr. Kshirsagar, has placed reliance on judgment of the Hon'ble Supreme Court in the case of *Dahiben ..vs.. Arvinbhai Kalyanji Bhanusali (Gajra) dead through LRs and others*¹, to contend that the cause of action in the suit is illusory in nature. I am afraid, the plaint averments, taken on their face value, do not indicate that the cause of action is illusory. In the case of *Dahiben* (supra), a sale deed which was admittedly executed was sought to be impugned on the ground that entire sale consideration was not paid. It was held that non-payment of sale consideration cannot be a ground for cancellation of sale deed. The ratio of the said judgment is not applicable to the facts of the present case.

8. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of *Nikhila Divyang Mehta and another ..vs.. Hitesh P. Sanghvi and others*², to contend that if the

¹ (2020) 7 SCC 366

² AIR Online 2024 Guj 2205

main relief sought in the suit is barred by the limitation, the other ancillary reliefs also cannot be granted. With respect, the said judgment cannot be made applicable to the facts of present case, when the principal relief of specific performance of contract does not appear to be barred by limitation, having regard to the plaint avernments.

9. Decision in the case of *Md. Mohar Ali ..vs.. Md. Mamud Ali and others*³, holds that a suit for specific performance of contract must be filed within a reasonable period. However, this judgment does not arise out of an application for rejection of plaint. Discretion as to whether specific performance can be granted having regard to delay can be exercised at the stage of final hearing. Plaint cannot be rejected on the ground of delay in filing suit, if the plaint avernment indicate that the suit is filed within limitation. Rather observations in paragraph-13 of the judgment, which deal with Article 54 of the Limitation Act, reiterate the settled legal position that the period of three years for filing suit for specific performance of contract is required to be counted from the date fixed under the agreement for execution of sale deed and that when such date is not fixed, the time commences from the date of refusal. The judgment on the aspect of limitation, clearly supports the case of

3 AIR 1998 Gauhati 92

respondent/plaintiff rather than petitioner/ defendant.

10. As stated above, it is the case of the plaintiff that he was placed in possession of suit property in terms of the agreement. The plaintiff has also sought decree for perpetual injunction against dispossession without following due process of law. The suit is maintainable to the said prayer as well. The plaint cannot be rejected with respect to the said prayer.

11. In view of the aforesaid, in the considered opinion of this Court, the learned trial Court has rightly rejected the application for rejection of plaint. The impugned order is just and proper and does not warrant any interference. Civil Revision Application is **dismissed** with no order as to costs.

12. At this stage, Mr. S.P. Kshirsagar, learned advocate for the revision petitioner seeks liberty to file an application before the learned trial Court under Order XIV Rule 2 of the CPC for deciding the issue of limitation as a preliminary issue. If such an application is filed, the same shall be decided on its own merits, in accordance with law.

(ROHIT W. JOSHI, J.)

C.L. Dhakate