



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

CIVIL REVISION APPLICATION NO.130/2025

Asha W/o Arvind Henry

...Versus...

Smt. Komal wd/o Govindram Tilwani and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. V.V. Bhangde, Advocate for applicant
Mr. A.M. Jaltare, Advocate for respondents

CORAM : ROHIT W. JOSHI, J.

DATE : 19/01/2026

1. Application for rejection of plaint at Exh.14 came to be rejected vide impugned order dated 22/07/2022, passed by the learned Civil Judge Senior Division, Nagpur in Special Civil Suit No.958/2020, which is subject matter of challenge in the present Civil Revision Application. The suit is filed for specific performance of contract and injunction restraining the defendant from disturbing possession of the plaintiffs over the suit property.

2. The application for rejection of plaint is filed on the ground that the suit is barred by limitation. The undisputed facts of the case are that on 31/12/2004 late Govindram Tilwani, predecessor of the plaintiffs had entered into agreement of sale with the present applicant/original defendant. The date stipulated for execution of sale-deed was 31/07/2005. The agreement provides a grace period of one

month for completing the sale transaction. However, after 31/07/2005 i.e. the date on which outer limit for execution of sale-deed expired and also after grace period of one month which expired on 31/08/2005, a Power of Attorney dated 22/09/2005 is executed by the defendant in favour of late Govindram, predecessor of plaintiffs. The Power of Attorney is titled as 'Irrevocable General Power of Attorney'. It is not in dispute that the defendant has received the entire sale consideration in terms of agreement.

3. It further appears that the defendant, after demise of the prospective purchaser (Govindram) on 31/08/2006 disputed the status of the plaintiffs as his legal heirs. The plaintiffs obtained a succession certificate with respect to amount in the account of late Shri Govindram with Vijaya Bank on 12/02/2007. Thereafter, the record indicates that there was some correspondence between the parties and lastly on 19/08/2020, the defendant has issued a letter to learned Advocate for the plaintiffs in response to the legal notice dated 29/07/2020, stating that she has no subsisting interest in the suit property, which was sold to late Govindram and/or his nominee, as per documents executed, which are referred in the said communication dated 19/08/2020.

4. The learned Trial Court has rejected the application for rejection of plaint on the ground that question of limitation is a mixed question of law and facts and therefore, plaint cannot be rejected on the ground of limitation, in the facts of the present case.

5. In the considered opinion of this Court, in a given case a plaint can be rejected on the ground of limitation and in every case, question of limitation need not be a mixed question of law and facts. If the plaint averments and the documents, on which the plaintiffs place reliance establish that the suit is barred by limitation, in such a case, the plaint can be rejected under Order VII Rule 11 of the Code of Civil Procedure. However, this is an exception to the general rule that limitation is a mixed question of law and facts.

6. Having regard to the letter dated 19/08/2020, in the considered opinion of this Court, it will not be safe in the present case to reject the plaint on the ground of limitation. Although, I find substance in the contention of Mr. Bhangde that limitation can be extended by acknowledgment of claim by a written communication only during subsistence of limitation and once the limitation has expired the limitation cannot be extended, in the present case the said aspect can be dealt with only upon a full-dressed trial when parties lead evidence. It is not in dispute that the prospective purchaser Govindram, who is predecessor of plaintiffs has paid the entire sale consideration and a Power of Attorney titled as 'Irrevocable General Power of Attorney' was also granted in his favour that too after the cut-off date stipulated for execution of sale-deed and also after expiry of grace period. In such circumstances, at this stage, it is difficult to hold that suit for specific performance is barred by limitation. It must also be stated that a plaint cannot be rejected in part and prayer clause (ii) in the plaint is for relief of injunction.

7. In view of the aforesaid, this Court finds no jurisdictional error in the order passed by the learned Trial Court. Civil Revision Application is, therefore, rejected, keeping all points canvassed open. No order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar