


MHJN020016862025 	<b>Spl. C. S. No.418/2025</b> Amit Vs. Sitabai & ors.
---	--

**ORDER BELOW EXH.05B**

Defendant Nos.5 to 7 moved an Application under Order VII Rule 11 (d) of the Code of Civil Procedure (in short 'CPC'). Plaintiff has filed Say below Exh.09.

2] According to these defendants, suit is barred by limitation. Plaintiff has mentioned illusory cause of action. Hence, prayed for rejection of plaint.

3] According to plaintiff, the Application is not maintainable. The provision is not applicable. Plaintiff has already mentioned cause of action. Hence, prayed for rejection of Application.

4] Heard Mr. S. G. Rathi, the learned advocate for defendants. Heard Smt. A. A. Patwari, the learned advocate for plaintiff.

5] Perused the Application and Say. I have gone through the pleading.

6] It appears from the pleading that, plaintiff has filed suit for Specific Performance of Contract and the consequential reliefs thereon. Perusal of plaint paragraph No.19 shows that plaintiff has mentioned cause of action for filing suit and accordingly the limitation clause.

7] Learned advocate for defendants raised objection on the count that, plaintiff has failed to show as to how the suit is within limitation ? The alleged cause of action is purely illusory.

8] Learned advocate for plaintiff has argued that, the issue as to limitation is mixed question of law and fact. Plaintiff has already disclosed cause of action and accordingly limitation.

9] Learned advocate for defendants, relied upon ratio laid down in following :-

i) **R. K. Roja Vs. U. S. Rayudu & Anr. reported in 2016(5) ALL MR 446 (S.C).** It is held that, Application for rejection of plaint can be filed at any stage before conclusion of trial. Court cannot proceed with the trial without disposing of said Application.

*Applicability : This case cited supra is about the stage wherein Application for rejection of plaint required to be considered. Present suit does not involve the said question because already the hearing on Application proceeded. Hence, cited case is not helpful to defendants.*

ii) **Prasad Nandkumar Deshmukh Vs. Dhaku Navalu Aukirkar & ors. reported in 2024(6) ALL MR 284.** It is held that, “Trial Court erroneously held that issue of limitation has to be decided on merit by leading evidence. Suit, on face of record is clearly barred by limitation. Plaint to be rejected.”

*Applicability : In the cited case supra the agreement to sale itself was doubtful. That transaction was on the face of record, barred by limitation. In the present suit, plaintiff has taken a plea as to cause of action from the date of knowledge. Hence, cited case is not helpful to*

*defendants.*

iii) **Smt. Nakubai Walu Dhokane Vs. Shri. Bhagwansing Prakash Chandra Kapoor reported in 2008(5) ALL MR 1.** It is held that, suit for specific performance filed after 15 years, was liable to be dismissed as time barred as per Article 54 of the Limitation Act.

*Applicability :* In the cited case supra, the suit was dismissed after framing points for determination and after adducing evidence. The stage of evidence is yet to come in the present suit. Hence, cited case is not helpful to defendants.

iv) **Shri. Mukund Bhavan Trust and ors. Vs. Shrimant Chhatrapati Udayan Raje Pratapsing Maharaj Bhosale and ors. reported in 2025(6) ALL MR 386 (S.C.).** It is held that, “Trial Court erred in keeping question of limitation open to be considered by Trial Court after considering evidence alongwith other issues, without deciding core issue on basis of averment made in plaint as mandated by Order VII Rule 11 (d) of C.P.C.

*Applicability :* In the cited case supra, it cannot be ignored that, it is observed in paragraph No.26 “At this juncture, we wish to observe that, we are not unmindful of the position of law that, limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record.” Considering this observation, that suit was hopelessly barred and cause of action found to be creation of fiction. However, in the present suit plaintiff has disclosed cause of action and nothing appears to be the abuse of process. Hence, cited case is not helpful to defendants.

v) **Ravi Bhaskar Wattamwar Vs. Babanrao Narbaji More Lrs. Baba S/o. Naru More and ors. reported in 2025(4) ALL MR 24.** It is held that, when right to sue arose in 1978 upon attaining majority; suit filed in 2022 would be beyond limitation as per Article 58, 110 of Limitation Act.

*Applicability :* In the cited case supra, the question as to limitation is discussed regarding the transactions on behalf of minor through their guardian. The present suit does not involve such aspect. Hence, cited case is not helpful to defendants.

vi) **Smt. Umadevi and ors. Vs. Shri. Anandkumar and ors. {Special Leave Petition (Civil) No.2137 of 2025} (Reportable).** It is held that, plaint has to be rejected, when it is barred by limitation.

*Applicability :* In the cited case supra, pleading suggests suppression of essential facts by the plaintiff. In the present suit, nothing to that effect appears apparent on the face of record. Hence, cited case is not helpful to defendants.

10] Learned advocate for plaintiff, relied upon ratio laid down in following :-

i) **Urvashiben Vs. Krishnakant Manuprasad Trivedi reported in AIR 2018 S.C. 955.** It is held that, period of limitation starts from date when plaintiff notices refusal of performance of contract by defendant. Plaintiff filing suit after knowing that sale was made in favour of third parties and defendant refused performance of contract. Suit not barred by limitation.

*Applicability :* Plaintiff has come up with case of cause of action from

*the date when the noticed the refusal, as mentioned in paragraph No.19 of the plaint. This pleading is sufficient to show the cause of action and limitation. Hence, ratio laid down is applicable.*

ii) **Salim D. Agboatwala and ors. Vs. Shamalji Oddhavji Thakkar and ors. reported in 2021 AIR (SC) 5212.** It is held that, “when a plaintiff claims that, he gained knowledge of essential facts giving rise to cause of action only at a particular point of time, same has to be accepted at the stage of considering Application under Order VII Rule 11. Plea regarding date on which plaintiff gained knowledge of essential fact is crucial for deciding question as to limitation. It becomes triable issue and suit cannot be thrown out at threshold.

*Applicability : It is at the initial stage the pleading as to cause of action and limitation is required to be accepted, unless otherwise proved. Hence, ratio laid down is applicable.*

iii) **Babasaheb Ramdas Shirole Vs. Rohit Enterprises reported in 2025 Supreme (SC) 972.** It is held that, limitation is a mixed question of law and fact and unless same is patently and unequivocally clear, it cannot form a ground under Order VII Rule 11 of CPC for non-suiting plaintiff.

*Applicability : It is settled principle that, limitation is a mixed question of law and fact and required to be decided after evidence. Hence, ratio laid down is applicable.*

iv) **Veronica Pimento Vs. Desmond Furtado reported in 2023 Supreme (Bom.) 1758.** It is held that, in cases of specific performance where no time for performance is fixed in agreement, limitation begins

when the plaintiff notices refusal of performance and the issue of limitation is to be decided after evidence.

*Applicability : It is for the reason mentioned in cited case supra (iii), ratio laid down is applicable.*

11] It is not the case that, no cause of action mentioned by plaintiff. Thus, the objection so raised that, the cause of action is illusory cannot be considered at this stage. As already held that, limitation is mixed question of law and fact, plaint cannot be rejected on the sole ground without giving opportunity of evidence. For all the aforementioned following order is passed :-

**ORDER**

Application (Exh.05B) is rejected.

Place : Jalna  
Date : 04.05.2026

(Smt. Priti D. Taru )  
2<sup>nd</sup> Jt. Civil Judge Senior Division,  
Jalna.

**CERTIFICATE**

I am affirm that the contents of this P.D.F, file Order are same, word to word, as per the original order.

Name of the Stenographer :- Amar R. Gadade (Steno Grade-III)  
Court :- 2<sup>nd</sup> Jt. Civil Judge Senior Division, Jalna.  
Date :- 04.05.2026  
Order signed by the  
presiding officer on :- 04.05.2026  
Judgment/order uploaded on :- 04.05.2026