



CNR No.MHPU120002732016

RCS No. 35/2016

**ORDER BELOW EXH.33.**

1. The present application is filed by defendants for rejection of the plaint under O-7, R-11 r/w section 151 of the Code of Civil Procedure, 1908 (for short 'the C.P.C.').

2. The present suit is filed by the plaintiff for specific performance of contract. The defendants have filed the present application on the following grounds:

i. The plaintiff has filed the suit for specific performance and to convey the suit property as per the agreement to sell dated 19/07/2000. The present suit is barred by law of limitation.

ii. The present suit is filed by fabricating the cause of action. It is based on mere imagination, on false allegations and misrepresentation. In the present suit there is lack of cause of action.

iii. The plaintiff has not paid requisite Court fee as provided in Bombay Court Fees Act. The suit is not properly valued and no proper Court Fees has paid by the plaintiff.

iv. The plaint is liable to be rejected in accordance of provisions of O.7 R.11 (b)(c)(d) r/w 151 of C.P.C.

3. The plaintiff filed say on overleaf of this application. The plaintiff stated that the present application is not in accordance with law. Though the suit is brought on the basis of agreement to sell dated 19/07/2000, In the para No. 6 of the agreement it is stated that the sale deed be executed within one month after obtaining regrant of the suit property. The defendant did not informed about

the same to the plaintiff. On the other hand after obtaining permission of regrant, the plaintiff immediately filed the present suit. The issue relating to limitation has to be decided alongwith the suit. Defendants have filed the present application with intent to prolong the matter. Hence reject the present application.

4. Perused the application and say. Considering the rival submissions of both parties following points arise for my consideration, to which I record my findings as follows:

<b>Sr. No.</b>	<b>Point for determination</b>	<b>Findings</b>
<b>1.</b>	Whether the plaint is liable for rejection on the grounds mentioned in O-7, R-11(b)(c)(d) r/w section 151 of C.P.C.?	No
<b>2.</b>	What order ?	Application is rejected

### **REASONS**

#### **AS TO POINT No. 1:**

##### **a) As to ground of cause of action:**

5. According to defendants there exists no cause of action in the present matter. Further the suit is filed by fabricating the cause of action based on mere imagination and false allegations and misrepresentation. Here it is to be noted that while deciding the application for rejection of plaint under provision of under O7 R.11 of C.P.C, the averments in the plaint are only the paramount consideration. Therefore, at this stage it is necessary to consider the averments in the plaint and not a defence taken by the defendants.

6. In para No. 8 of the plaint which deals with the cause of action of the suit. Plaintiff averred that the cause of action arose on 03/07/2015, when the plaintiff sent a notice to defendants and informed them to execute the sale deed in accordance of agreement to sell dated 19/07/2000. Further, on 14/08/2015 the defendant No. 1 and 2 sent reply notice and refuse to execute the sale deed. Considering the averments in the pleading it appears that the plaintiff entered into the agreement to sell with defendants. Thereafter, the defendants refused to execute the sale deed. Therefore, the plaintiff has right to file suit for specific performance of contract and cause of action arose for the suit on refusal of performance of contract by defendants.

7. Here it is necessary to mentioned that cause of action is a set of facts or bundle of facts that make up the grounds of filing a suit. In the present suit, the plaintiff pleaded that parties agreed to execute the sale deed vide agreement to sell dated 19/07/2000. Accordingly, on 03/07/2015 the plaintiff sent notice to defendants to perform in accordance of agreement. However, on 14/08/2015 the defendant No.1 and 2 refused to perform in accordance of agreement. Considering these averments in the plaint their appears set of facts which makes the ground for filing suit for specific performance of contract. In the present suit, the cause of action for filing suit arose when defendants refused to perform in accordance of agreement. Therefore, it is crystal clear that there exists cause of action in the present suit.

**b) As to point of Limitation:**

8. According to defendants the agreement to sell has executed on 19/07/2000 and suit is filed in the year 2016. Therefore the suit is barred by law of limitation. Here as I above mentioned at this stage of the suit while deciding the issue of limitation, only averments in the pleading has to be consider. According to article 54 of the Limitation Act 1963, the period of limitation for filing suit for specific performance of contract is 3 years and period begins to run when date fixed for performance or if no such date is fixed when the plaintiff has notice that performance is refused.

9. In the present matter plaintiff pleaded that at the time of execution of the agreement to sell the both parties agreed to execute the sale deed within a month after receiving regrant of the suit property on old conditions. The plaintiff has filed copy of agreement to sell alongwith Exh.3 which supports averments made in the plaint. Considering averments in the plaint it appears that the parties fixed to execute the sale deed within month from the date of order of regrant of the suit property. The plaintiff pleaded that on 11/05/2015, the regrant order was passed and permission was granted to sell the suit property. The plaintiff thereafter sent notice to the defendants to execute the sale deed. However, the defendant No. 1 and 2 sent a reply notice on 14/08/2015 and refused to execute the sale deed.

10. In the present matter if limitation counted from the period mentioned in the agreement to sell i.e. within one month

from the regrant order i.e. 11/05/2015, the suit appears within a limitation. Further if the period of limitation is counted from refusal by defendants through reply notice dated 14/08/2015, the suit is within a limitation vide article 54 of Limitation Act. Therefore considering these reasons it can be said that the suit is not barred by law of limitation. Here it is to be noted that considering the nature of suit and relief claimed by the plaintiff, in the present suit, limitation is mixed question of law & facts. Therefore in the present matter limitation would not be ground for rejection of plaint.

**c) As to Valuation and Stamp :**

11. According to defendants the plaintiff has not paid requisite Court Fee as provided in the Bombay Court Fees Act. Suit is not properly valued and no Court Fees paid thereto. Therefore the suit is liable to be rejected O.7 R.11 of C.P.C.

12. Here it is to be noted that according to section 6(x) of Bombay Court Fees Act the amount of fee payable for suit of specific performance of contract of sale shall be computed according to the amount of consideration. The plaintiff in paragraph No.9 of the plaint averred that the consideration amount of sale is Rs.1,15,000/- and the plaintiff has claimed relief of injunction also, therefore he valued the said relief for Rs.1000/-. The plaintiff stated that he has paid stamp on entire amount of Rs.1,16,000/-. Therefore it appears that the plaintiff has valued the relief of specific performance of contract in accordance of consideration of amount of sale. Considering the averments in the paragraph No. 9 of the plaint it

appears that the plaintiff has properly valued the relief claimed in the suit in accordance of section 6(x) of Bombay Court Fees Act and paid proper stamp thereof. Therefore the plaint is not liable for rejection in view of rule (b) and (c) of O.7.R.11 of C.P.C.

13. The defendants filed present application on the ground of cause of action, limitation, proper valuation and stamp. Here considering the above discussion it appears that there exists cause of action for the suit. Further the suit appears within a limitation the plaintiff has properly valued the reliefs claimed by him and paid proper stamp thereon. Therefore the present plaint is not liable to be rejected on the grounds claimed by defendants. Hence I answer point No. 1 in negative.

**AS TO POINT NO.2:**

14. Considering the facts and circumstances in which the plaintiff inclined to file the present suit, reasons mentioned above and finding on the point no.1, the present application is deserves to be rejected. Hence I pass following order.

**ORDER**

Application is rejected.

**Date:** 17/03/2022

(H.U.U. Patil)  
**Jt. CJJD, Bhor, Dist. Pune.**

**"I affirm that the contents of this P.D.F file Order are same word for word as per original Order.**

**Name of the Steno : A.A.Shaikh**

**Court Name : Smt.H.U.U.Patil**

**Jt.C.J.J.D, Bhor, Dist. Pune.**

**Date :17/03/2022**

**Order signed by presiding officer on :19/03/2022**

**Order uploaded on :19/03/2022."**