

Spl.C.S.No 51/2012
M/s Navrang Enterprises Vs. Mahesh & Ors.

ORDER BELOW EXH. 45

1] The present application is filed for rejection of plaint U/O 7 R 11 (a) and (d) of CPC by defendant no. 6 for non-compliance of section 16 (c) of Specific Relief Act, 1963 and it being barred by limitation.

2] Plaintiff resisted the application by filing their say at **Exh. 46.**

3] Learned advocate Shri. Sagar Jage, for defendant no. 6, argued that, plaintiff failed to comply the terms and conditions mentioned in the agreement dated 12/12/2006. The plaintiff took responsibility to pay the lease amount of the plot, which was to be allotted to defendants and will take further necessary action for execution of sale deed. The plot was allotted by CIDCO on 21/08/2007. Despite that, no action was taken. It shows that, plaintiff was never ready and willing to perform its part of contract as per mandate of section 16 (c) of Specific Relief Act, 1963. Apart from it, plaintiff did not seek the relief of specific performance within three years from the date of allotment of plot to defendant on 21/08/2007. The present suit is filed in the year 2012 and the same is barred by article 54 of Limitation Act, 1908.

4] In support his argument he relied upon the following rulings.

A] [**1997 DGLS (SC) 717**] **K.S. Vidyanadam Vs. Vairavan**. This authority is cited to point out that, even though the time is not the essence of contract of sale, the performance is required to be performed within a reasonable time having regard to the term of the contract and nature of the property.

B] [**2017 DGLS (Bom.) 1439**] **Naginchand s/o Devichand Buccha Vs. Vinod s/o Tarachand Gupta & Ors**. This authority is cited to point out that, when specific date is fixed for performance of contract or from the date of knowledge regarding refusal, then the limitation period of 3 years will run from the said date.

5] On the other hand, learned advocate Shri. Sachdev strongly opposed the arguments advanced by the defendant. He contended that plaintiff was always ready and willing to perform its part of contract. It was the defendant who avoided to perform his part of contract. Whereas, the issue of limitation is a mixed question of fact and law. The same cannot be decided merely on pleading. Lastly, prayed for rejection of the application. In support his argument he relied upon the following rulings.

a] [**2018 SCC Online (Bom.) 20327**] **Bhausahab dattue Kadam Vs. Vinod Dilipkumar Majethiya & Ors**. This authority is cited to point out that, question of limitation is a mixed question of fact and law and which would require evidence.

b] [2018 SCC Online (SC) 2833] **Urvashiben Vs. Krishnakant Manuprasad Trivedi**. This authority is cited to point out that, question of limitation is a mixed question of fact and law and which would require evidence.

c] [2018 SCC Online (Bom.) 20034] Stephen Barnard Vs. Royal Palms (India) pvt. Ltd. & Ors. This authority is cited to point out that, at the stage of hearing the application U/O 7 R 11, the court does not consider whether the claim in the suit and the allegation/averments will succeed.

d] [2019 (4) Supreme Court Cases 367] Pawankumar Vs. Babulal (deceased) through Lrs. This authority is cited to point out that, a disputed question of fact has to be adjudicated on the basis of evidence and cannot be decided at the stage of consideration of application U/O 7 R 11.

e] [2012 (8) Supreme Court Cases 701] Bhau Ram Vs Janak Singh & Ors. This authority is cited to point out that, only averments in plaint can be looked into while deciding application for rejection of plaint.

6] Perused application, say and plaint. It clearly goes to show that, plaintiff had made averments in respect of his readiness and willingness to perform its part of contract. Apart from it, it has paid more than 50% of the consideration amount to defendant. What steps were required to be taken by the plaintiff and what were circumstances on the date of allotment of plot on 21/08/2007 is a

matter of fact and the same require evidence. Similarly, the issue of limitation raised in this matter clearly demonstrate that it is also a question of mixed fact and law. Merely on assumption and surmises it can't be held that whatever the defendant is saying is to be true and correct. The rulings relied by plaintiff squarely applies to its case. Whereas, the ruling relied by defendant will not come for his help at this juncture.

7] In view of this, present application deserves to be rejected.

ORDER

1] Application stands rejected.

Panvel.
Dt. 07-12-2019

(M. M. Rao)
Civil Judge, Sr. Dn., Panvel.