

MHRG040003702011



**Order Below Exh.23**

This is an application of defendant no. 5 for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.

2. Perused the application and say. Heard both sides.

3. It is submitted by the defendant that, the plaintiff has filed the present suit for the relief of specific performance of the memorandum of understanding dated 29-06-2004 (the suit agreement"), alleged to have been entered and executed between the plaintiff and defendant no. 1 and 3, whereby it is alleged that the plaintiff has purchased the lease hold rights admeasuring 500 square meters, to be then allotted by CIDCO Ltd. under the 12.5% scheme to defendant no. 1 to 3. That the present suit is barred by law, and the plaint is liable to be rejected under the provisions of Order VII Rule 11 Sub Rule (d) of Code of Civil Procedure, 1908 as the present suit from the statement in the plaint to be barred by law on the following amongst ground.

4. Firstly, as per the suit agreement, more particularly recital no. 9, in case of any dispute arisen between the parties thereto, the plaintiff and defendant no. 1 to 3 herein, the same shall be referred to sole arbitrator and the award been passed by

the said sole arbitrator shall be binding upon the parties thereto. Secondly, the plaintiff herein has filed the present suit on 16-3-2011, for specific performance of suit agreement dated 29-06-2004, alleged to have been executed by and between the plaintiff and defendant no. 1 to 3, in respect of the entitlement admeasuring 500 square meters, then to be allotted by CIDCO Ltd. under 12.5% scheme. The CIDCO Ltd. initially by letter dated 14-06-2004 has allotted amalgamated plot admeasuring 3000 square meters, at Ulwe Node, Taluka Panvel, District Raigad, which included entitlement admeasuring 500 square meters belonging to defendant no. 1 to 3 herein. Subsequently, CIDCO Ltd. by letter dated 03-08-2006, had canceled the allotment of plot no. 177 and had allotted two (2) plots viz., plot no. 185, admeasuring 1050 square meters, at Sector 20, Ulwe Node, Taluka Panvel, District Raigad and Plot no. 178, admeasuring 1949.99 square meters, at Sector 20, at Ulwe Node, Taluka Panvel, District Raigad. CIDCO Ltd. has handed over physical possession of the aforesaid two plots to the allottee, including defendant no. 1 to 3 upon execution of agreement to lease dated 31-10-2006. Article 54 to Schedule I of the Limitation Act, 1963 lays down that the period of limitation begins to run from the date on which the performance is fixed or where no such date is fixed, when the plaintiff noticed that performance is refused. The plaintiff ought to have brought the suit within a maximum period of three years from 21.06.2004 and/or 16.10.2006 and/or 31-10-2006, when CIDCO Ltd. had amalgamated the entitled of defendant no. 1 to 3 and had allotted and/or executed agreement to lease in respect of consolidated plot no. 178, admeasuring 1949.91 square meters, at Ulwe Node, Taluka Panvel, District Raigad. Since the same has not been done, the present suit is hopelessly barred by the Law of Limitation.

5. Thirdly, the suit agreement dated 29-06-2004 is not enforceable and no specific performance of the said agreement can be ordered as the property in respect of which the suit agreement

had been entered into is vague and unidentifiable.

6. That the plaint of the suit does not disclose a cause of action, arisen for filing of the present suit and hence the plaint is liable to be rejected under the provisions of Order VII Rule 11, Sub Rule (a) of Code of Civil Procedure, 1908.

7. It is submitted by the plaintiff that, he has filed the present suit for specific performance of contract dated 09/06/2004, between plaintiff and defendant no. 1 to 3. That, the plot to be allotted to the defendant no. 1 to 3 under 12.5% G.E.S. by M/s CIDCO, area admeasuring about 500 Sq. mtr. has been allotted separately in 2 different plots i.e. the suit plots having Plot No. 185, Sector- 20, Ulwe, Tal. Parnel, Dist. Raigad, area admeasuring about 1050 Sq. Mtr. and Plot No. 178, Sector- 20, Ulwe, Tal. Parnel, Dist. Raigad, area admeasuring about 1950 Sq. Mtr. He had paid the amount of Rs. 1,46,614/- for the suit plots as mentioned above by issuing D.D. having D.D. No. 903218 drawn on IDBI Bank, Vashi branch on dated 07.08.2006 towards the Lease Premium and other necessary charges as raised by M/s. CIDCO Ltd. The said suit plots were transferred by the defendant no. 1 to 3 in the name of defendant no. 4 and 5 by executing Tripartite Agreement with M/s. CIDCO Ltd. which came to knowledge of the plaintiff in December 2010. Thereafter, he had issued legal notice to M/s. CIDCO under Section 159 A of MRTP Act, through his Advocate on dated 29/12/2010.

8. The cause of action for filing the present suit against these defendants arose on December 2010 after getting the knowledge of transfer of the suit plots in the names of defendant no. 4 and 5 by executing Tripartite Agreement with M/s. CIDCO Ltd. Para No. 10 of the plaint the plaintiff had clearly stated/mentioned the property/plot details or description. Hence, the contention of the defendant that suit is hit under the provision

of O. 7 R. 3 of the CPC. is false, frivolous and vexatious. That, no time was fixed for performance of the contract between plaintiff and defendant no.1 to 3. That, the plaintiff was regularly paying the consideration amount to defendant no. 1 to 3 till 05/05/2008 and also the defendants were receiving payments regularly from plaintiff and said fact is specifically elaborated in the suit. That, the plaintiff was not aware of the denial of the contract till December, 2010. Hence, the plea of the defendant for rejection of the plaint under Limitation Act cannot be digested and hence the same is denied. Suit is not hit by any provisions of O. 7 R. 11 of CPC. Hence, prayed that application of defendant be rejected.

9. In view of provision of Order VII Rule 11 of Civil Procedure Code, plaint shall be rejected in following cases :

*(a) where it does not disclose a cause of action;*

*(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;*

*(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*

*(d) where the suit appears from the statement in the plaint to be barred by any law;*

*(e) where it is not filed in duplicate;*

*(f) where the plaintiff fails to comply with the provisions of Rule 9;*

10. The application for rejection of plaint under Order VII Rule 11 of Civil Procedure Code can be considered only on the grounds given in clauses (a) to (f).

11. It is settled law that while considering the plea of rejection of plaint under Order VII Rule 11 of Civil Procedure Code only the averments in the plaint are relevant. All the averments in the plaint are required to be treated as true and that the pleas taken by defendants in the written statement or the application for rejection of plaint are wholly irrelevant for this purpose.

Perused the plaint.

12. It is the case of the plaintiff that, the defendant no. 1 to 3 were the owners of land bearing Unit case No. Gavhan 535, Nhave 314, Survey No. 47, A, Hissa Number 5,723, and area 0-36-12, 0-23-0, all lying being and situated at Gavhan Navhe, Taluka Paniel District Raigad. In or about the year 1970, the Government of Maharashtra decided to acquire the lands in the vicinity of Navi Mumbai, Taluka Paniel to establish a new township. The said property of the defendant was acquired by Government for the purpose of establishing Navi Mumbai Township. Government of Maharashtra, declared that persons whose lands were acquired for establishing Navi Mumbai Township would be allotted plots of lands having area to the extent of 12.5% of the total land acquired from such persons. They were entitled to allotment of the plots to the extent of 12.5% of the area of the said property. The defendant no.1 to 3 represented the plaintiff that they were entitled to about 5 plots each admeasuring about 100 sq. mtr. (totally admeasuring about 500 sq. mtrs.) which were going to allotted in Ulwe Node. Defendant no. 1 to 3 were interested in disposing of the said plots to any prospective purchaser/developer as the defendants were in dire need of money. Plaintiff agreed to purchase the said plot from the defendant. Hence, an agreement dated 29/06/2004 was executed between the plaintiff and the defendant no. 1 to 3.

Plaintiff paid sum of Rs. 14,94,127/- to the defendants.

13. That on 14th June, 2004 the CIDCO has allotted amalgamated Plot No. 177, Sector- 20, Ulwe area admeasuring about 3000 Sqr. Mtr. out of which the share of the defendant no. 1 to 3 is 500 Sqr. Mtr. but later on M/s CIDCO Ltd. had changed the plot and again allotted the said plot on 03/08/2006 in amalgamation having plot no. 178 about 1950 and Plot No. 185 about 1050 Sqr. Mtr. against previous allotment of the said plot. Share of the plot of the defendant no. 1 to 3 i.e. of 500 Sqr. Mtr. has been distributed and included in plot no. 178 admeasuring about 1950 and Plot No. 185 is admeasuring about 1050 Sqr. Mtr. in Sector- 20, Ulwe.

14. He was shocked when he came to know from the office of the defendant no. 6 to 7 that the defendant no. 1 to 3 have created third party interest in the suit plots by executing the Tripartite Agreement with the defendant no. 4 and 5 in respect of the suit plot. As the defendant no. 1 to 3 were not co-operating the plaintiff to perform their part of the agreement, the plaintiff through his advocate issued two legal notices dated 30/12/2010 to the defendants and requested them to perform their part of the agreement. Defendant no. 1 to 3 has been refusing to perform their part under the suit agreement dated 29/06/2004. Hence, plaintiff has filed the suit for specific performance of agreement dated 29/06/2004 and setting aside the tripartite agreement with defendant no. 4 & 5.

15. It is the contention of the defendant that, the suit filed by the plaintiff does not disclose the cause of action, the suit is barred by law of limitation, Hence, the plaint is liable to be rejected under Order 7 Rule 11 (a )& (d)of the CPC.

16. The plaintiff has filed the suit for specific performance

of agreement dated 29/06/2004 executed between the plaintiff and defendant no. 1 to 3. Perusal of plaint shows the cause of action. The plaintiff had paid the amount to the defendant no. 3 till 05/05/2008. Plaintiff issued notice dated 30/12/2010 to the defendants and requested them to perform their part of the agreement. The suit is filed on dated 15/03/2011. Limitation is the mixed question law and fact. Whether suit is barred by law of limitation is a mixed question of law and fact which necessitates evidence. Hence, issue needs to be framed on the point of limitation and after considering the evidence on record it will be decided. It can not be decided at the time of deciding the application under Order 7 Rule 11 of CPC.

17. For the above reasons following Order is pass.

### **Order**

1. Application (Exh.23) is rejected.

Panvel.  
Dated: 04/12/2025.

(Rajshri M. Ganvir)  
3rd Jt.Civil Judge S.D., Panvel