



Khalapur Taluka Sikshan
Prasark Mandal Khopoli

Vs.

Jaysing Shantaram Deshmukh and ors.

ORDER BELOW EXHIBIT NO.36 IN
REG. CIVIL SUIT NO.44/2014

The defendant no 1 to 3 has filed the instant application under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908, for rejection of plaint.

02. By this application, the defendants have contended that, the present suit is filed for specific performance of contract on the basis of agreement dated 19/06/2001, which is barred by the law of limitation. Hence they prayed to reject the plaint under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908.

03. On the contrary plaintiff by filing say at Exhibit No.37 resisted the application. It is contended that, the defendants first time refused the performance, when plaintiff issued pre-suit notice. Therefore according to plaintiff suit is filed well within prescribed period. Thus, plaintiff prayed to reject the application.

04. I have heard the learned advocate for plaintiff. Defendants failed to advance their arguments.

05. Considering the application and submissions of the parties, the following points arise for my determination and I have recorded my findings thereon with reasons stated below.

<u>SR.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
01)	Whether statement in the plaint is barred by any law ?	<u>NO</u>
02)	What order ?	<u>AS PER FINAL ORDER.</u>

-: REASONS :-

AS TO POINT NO. 1 :-

06. The defendants raised objections for rejection of plaint that, suit is barred by the law of limitation. As per article 54 of Limitation Act, suit for specific performance of contract has to be filed within 3 years from the date fixed for the performance, or , if no such date is fixed, when the plaintiff has notice that performance is refused. It is settled law that, while deciding application for rejection of plaint, court has to see only avarements made in the plaint. In this case, whether time is essence of the contract, if time is not essence of the contract, when plaintiff notice the refusal of performance are the issues which requires evidence. Therefore it appears that, in this matter limitation is mixed question of fact and law. In this respect the Hon'ble Apex Court in *Salim D.Agboatwala Vs. Shamalji Thakkar, Spl. Leave Petition No.(c), 26441/2014*, held that, limitation is mixed question of law and facts and it becomes a triable issue. Hence, the suit cannot be thrown out at the threshold. Considering the ratio laid down in above case law, plaint cannot be rejected on the ground of limitation being mixed question of law and facts. Hence, I answered point no.1 in the "Negative".

AS TO POINT NO.2 :-

07. Considering above all aspects, I found that, application is devoid of merits and liable to be rejected. Hence, in answer to point No.2, I proceed to pass the following order:-

:-ORDER:-

01.	Application (Exhibit No.36) is rejected.
02.	Cost of the application is cost in cause.

(Dictated and pronounced in open Court)

Date: 11/11/2022.
Khalapur.

(P.M.Mane)
Jt. Civil Judge, Junior Division,
Khalapur.