

MHRG140008172012

Order below Exhibit 32

in

RCS No. 194/2012

Ramesh Shankarmal Pilani and others ----- Plaintiffs

Vs.

Kashinath Hiraji Patil and others ----- Defendants

(Passed on 12.06.2025)

1. This is an application filed by defendant no. 1 to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure Code (CPC) on the point of limitation.

**Defendant no. 1's application:**

2. The plaintiff has filed the present suit for specific performance of the agreement dated 20.05.1997, for obtaining possession, and for a perpetual injunction. The said suit has been filed to enforce the said agreement and to obtain possession of the property at a price much lower than the prevailing market rate. The said agreements have been obtained by misleading and deceiving the defendants.
3. However, as per the terms of the alleged agreement, all the expenses related to obtaining permission for the sale of the said property were to be borne by the plaintiff, as agreed between the parties.

Despite this, the plaintiff intentionally did not take any steps within the prescribed time to complete the transaction. If the plaintiff claims that the said transaction was not completed, then the plaintiff was required to file a suit for specific performance of the alleged agreement within the period of limitation of three years from the date of the agreement, under Article 54 of the Limitation Act and the Specific Relief Act. Accordingly, the plaintiff should have filed the said suit on or before 19.05.2000.

4. However, the plaintiff filed this suit after the expiry of the prescribed three-year limitation period, almost 14 years later, by issuing an illegal notice dated 13.03.2012, with the intention of taking undue advantage. The plaintiff has filed the suit on 05.05.2012 based on that notice.
5. Considering the statements and the reliefs claimed in the suit, the suit is completely barred by limitation. Despite this, the plaintiff has made a desperate attempt to show that the suit is within limitation by stating that the cause of action arose only after the defendants were served with the notice dated 13.03.2012.
6. In fact, the notice was served after the expiry of the limitation period, and hence, the plaintiff cannot claim that the suit is within the limitation period based on the said notice dated 13.03.2012. Therefore, considering the plaintiff's own statements regarding limitation, the suit is time-barred and ought to be dismissed immediately.

**Plaintiff's case:**

7. The plaintiff has submitted that in the agreement dated 20.05.1997, the task of taking permission from the authorities was to be done by the defendants but they failed to perform their part of the contract. Further, a notice was issued by them to the defendants on 13.03.2012 but they did not perform their part of contract. On refusal to perform their part of the agreement, the plaintiff filed this suit within a period of three years from the date of refusal to perform their part of the agreement. Thus, the suit is within limitation. Moreover, the issue of limitation is mixed question of fact and law. Hence, the application deserves to be rejected.
8. Considering all the submissions of both the parties, following points arise for my determination and I record my findings with the reasons stated below:

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1]	Whether the suit is liable to be rejected on the point of limitation?	No
2]	What Order ?	Application is rejected.

**:: REASONS ::**

**POINT No. 1 :-**

9. Heard the advocate for the plaintiffs.

10. Despite repeated opportunities, defendant no. 1 failed to argue the said application.

**Arguments of the plaintiffs:**

11. The plaintiffs have objected the present application on the ground that the said application is not tenable. The plaintiff contends that, as per the following judgment of the Hon'ble Bombay High Court, while deciding an application under Order 7 Rule 11 of the Civil Procedure Code, a detailed reading of the pleadings in the plaint is necessary:

*2014 (7) ALL M.R. 252: Magnum Construction vs. Nand Kumar Anand Vaity and Others (Note-'A')*, which states: "Civil Procedure Code (1908), O.7 R.11 - Rejection of plaint - At the stage of deciding an application under O.7 R.11, pleadings have to be construed as they stand, without adding or subtracting words or changing their apparent grammatical sense." (Para 16)

12. The entire contents of the plaint filed by the plaintiff should be read as part and parcel of this reply.

13. A meeting took place between the predecessor of the defendants, Late Shri Hiraji Mahadya Patil, defendant no.1 and the plaintiff and their representatives. In this meeting, discussions regarding the transaction of the suit property were held. It was agreed that the property would be sold at the rate of Rs. 1,85,000/- per acre,

amounting to a total of Rs. 1,29,900/- (Rupees One Lakh Twenty-Nine Thousand Nine Hundred Only). The predecessor of the defendants, Late Shri Hiraji Mahadya Patil, and defendant no.1 agreed to sell the property at this price, and the plaintiff accepted and confirmed the same.

14. After the sale transaction of the suit property was finalized between the plaintiff and the said predecessor and defendant no.1, a clear and unambiguous *Agreement to Sell* (Sathekharar) dated 20.05.1997 was executed in favor of the plaintiff.

15. As per clauses 2 and 3 of the said agreement:

- Since the suit property was under land ceiling and tenancy restrictions, the responsibility to obtain sale permission under Section 43 of the Tenancy Act was accepted by the predecessor and defendant no.1.
- The responsibility to obtain permission under the Urban Land Ceiling Act and any other necessary certifications/documents required for registration of the sale deed was also taken up by them.
- They also agreed to make the required applications and provide necessary replies in relation to these permissions.
- After obtaining the required permissions, they agreed to execute the registered sale deed within six months in favor of the plaintiff.

16.As per Clause 7 of the agreement:

- If there were any encumbrances on the property, the predecessor and defendant no.1 agreed to clear those and ensure the plaintiff would get a clean and unencumbered title to the property.

17.Upon reading the agreement, it would be clear that the remaining balance was to be paid by the plaintiff within six months of obtaining ULC and Fragmentation Act permissions, and the sale transaction was to be completed accordingly. It is also explicitly stated that obtaining such permissions is the responsibility of the seller, i.e., the defendants.

18.Section 27 of the Urban Land (Ceiling and Regulation) Act states the following

*27. (1) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of sub-section (3) of section 5 and sub-section (4) of section 10, no person shall transfer, by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urbanizable land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years from such commencement or from the date on which the building is constructed, whichever is later, except with the previous written permission of the competent authority.*

*(2) Any person desiring to make such a transfer may apply in writing to the competent authority in the prescribed form and manner.*

19. Since the suit property is governed under the Urban Land Ceiling Act, as per Section 27, the legal responsibility of applying for and obtaining permission for sale rests solely with the seller – the defendants.

20. The said agreement was signed in the presence of witnesses by both the plaintiff and the predecessor of the defendants, Late Shri Hiraji Mahadya Patil, and defendant no. 1. At the time of the agreement, the plaintiff paid an amount of Rs. 27,315/- (Rupees Twenty-Seven Thousand Three Hundred Fifteen Only) via cheque no. 028043 dated 20.05.1997 drawn on Abhyudaya Co-op. Bank, which was handed over to the defendants upon their request. A receipt acknowledging the same was executed in the presence of witnesses.

21. The plaintiff trusted that the defendants would soon complete the legal formalities and obtain the necessary permissions to transfer the suit property. The plaintiff has always been willing to complete the transaction and extended assistance to the defendants whenever needed.

22. During this period, the predecessor of the defendants, Late Shri Hiraji Mahadya Patil, passed away on 01.08.1997. After his

death, the plaintiff approached the legal heirs of the deceased and requested them to register their names as legal successors. The defendants filed applications and affidavits with the revenue authorities and got the names registered via mutation entry no. 2552 dated 23.02.1999. Later, after the death of Bhaskar Hiraji Patil (predecessor of defendants no.13 to 18) on 11.10.2004, a similar succession entry was made via mutation no. 2721.

23. After these developments, the plaintiff again requested the defendants to fulfill the terms of the agreement. However, the defendants kept making excuses and avoided obtaining sale permissions and executing the sale deed. Finally, the plaintiff conveyed that upon confirmation from the defendants that all conditions under the agreement dated 20.05.1997 were fulfilled and required permissions obtained, the plaintiff would immediately pay the remaining amount and complete the sale transaction.

24. In the intervening period, the suit property and a considerable surrounding area were included in the Special Economic Zone (SEZ) declared by the Government of Maharashtra. As the said property was included in the acquisition for the SEZ, a seal/stamp indicating such acquisition was placed on the 7/12 revenue extract (record of rights). Consequently, all proceedings for the purchase of the said land were halted. However, since prior to this, the Plaintiff had already entered

into an agreement for sale (Sathekharar) with the Defendant regarding the said property and had paid a substantial part of the consideration, which the Defendant had utilized for family needs, the said agreement became legally binding on the Defendant. Moreover, due to the Plaintiff's urgent need for the land, the Plaintiff had submitted objections regarding the acquisition to the Sub-Divisional Officer, Executive Engineer at Khed, the Tahsildar, and the Collector.

25. Accordingly, the Plaintiff decided to wait for a while based on the Defendant's assurance. The Plaintiff further states that, as a result of their objections and the collective efforts of the Defendant and other farmers whose lands had been forcibly included in the SEZ, the Government of Maharashtra canceled the SEZ. As a result, the stamp indicating acquisition on the 7/12 extract was removed, and the lands included in the SEZ were returned to the respective farmers, who were then free to deal with their land as they wished. Hence, the Plaintiff contends that now the Defendant too is in a position to complete the pending sale transaction with the Plaintiff regarding the suit property.

26. The Plaintiff submitte that since a sale agreement was executed with the Defendant, and the Plaintiff has always been ready and willing to fulfill the terms of that agreement and purchase the property, and since the Plaintiff has an urgent need for the said property, the Plaintiff, through their advocate issued a

notice dated 13.03.2012 to the Defendant. In the notice, it was stated that within 15 days of receipt, the Defendant should obtain the necessary permissions and complete the transfer of the suit property to the Plaintiff as per the agreement dated 20.05.1997, after accepting the balance payment.

27.The Plaintiff submitted that despite receiving the said notice around 16.03.2012, the Defendant failed to take any steps to obtain the necessary permissions or execute the sale deed for transferring the property to the Plaintiff within the stipulated period. Consequently, on 10.04.2012, the Plaintiff and their representatives met the Defendant and their family and requested them to fulfill the agreement. However, the Defendant refused to do so. Following this refusal, the Plaintiff filed the present suit against the Defendants within the limitation period of 3 years in 2012.

28.Article 54 of the Limitation Act is divided into two parts.

According to this provision:

- If a specific date for performance is fixed in the contract, the suit for specific performance must be filed within three years from that date.
- If no such date is fixed, the suit must be filed within three years from the date the Plaintiff notices that the Defendant has refused performance.

29. The notice sent through their lawyers on 13.03.2012 was received by the Defendants around 16.03.2012. Despite the notice period, the Defendants did not take any steps to obtain the necessary permissions or execute the sale deed to legally transfer the property in favor of the Plaintiff. On 10.04.2012, the Plaintiff, along with representatives, met the Defendant and their family to request fulfillment of the agreement, but the Defendant refused to do so. Due to this refusal, the Plaintiff filed the suit against the Defendant in 2012 within the three-year limitation period.

30. The Ld advocate for the plaintiffs has relied on the following case laws:

- i. Merit Magnum Construction v.. Nand Kumar Anand Vaity and Ors., Hon'ble Bombay High Court, 2014 (7) ALL M.R 252: (Note-'C'), which reads as under - Civil P.C. (1908), 0.7 R.11(d) - Rejection of plaint on the ground of limitation Validity Averments made in the Plaint show that suit was not barred by limitation - Also issue of limitation is mixed question of law and fact necessitating evidence for effective adjudication - In such situation, plaint could not have been rejected by resort to provisions of Order 7 Rule 11(d)- Rejection of plaint, not proper (Paras 21, 23, 24).
- ii. M/s. Candolim Developers Pvt. Ltd. & Anr. Vs. Mr. Pravin Grover & Ors., Hon'ble Bombay High court, 2017 (2) ALL MR 117, Civil P.C. (1908), 0.7 R.11(d) - Rejection of plaint Application for While examining application u/0.7 R.11, defence of

defendants in W.S. cannot be looked into Only averments in plaintiff should be considered. (Para 10).

- iii. Gulwantbhai Mulchand Shah & ors. Vs. Anton Elis Farel & Ors., Hon'ble Supreme court, AIR 2006 SC 1556: Limitation Act, 1963 14. Rule 2, CPC perpetual injunction - Articles 54 and 113 r/w Order Specific performance and Limitation No time fixed for performance In a case where no time for performance was fixed, the court had to find the date on which the plaintiff had notice that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof Suit after 29 years of agreement Suit insofar as it relates to the prayer for a decree for perpetual injunction cannot be held to be barred by limitation at this preliminary stage Matter remanded to trial Court for a decision of all the issues arising therein, including the issue of limitation, in accordance with law after giving the parties an opportunity to adduce evidence in support of their respective cases.
- iv. Agya Rani Dua Vs. Vidyagauri J. Tripathi & Ors., Hon'ble Supreme court, 2007(3) MH.L.J. 480 - Limitation Act Art. 54 and Schedule 1 Suit for specific performance of agreement- Limitation of three years- not attracted when agreement was not terminated and subsisting.
- v. Ahmmadsahab Abdul Mulls (deceased by L.rs v. Bibijan and ors.), Hon'ble Supreme court 2009(5) Bom.C.R. 324 / AIR 2009 SC. 2193 (A) Limitation Act, 1963, Art. 54 Words and Phrases Date 'fixed' Meaning of Held, 'fixed' means, having final or

crystallized or character not subject to change or fluctuation. Expression, 'date fixed for performance', held, to be 'crystallized notion'.

- vi. Madina Begum & Ors.V/s Shiv Murti Prasad Pandey & ors, Hon'ble Supreme court, 2016 ALL SCR 1684 (A) Specific Relief Act 1963, S. 20 - Limitation Act 1963 Sch.1 Art. 54 agreement - Limitation Specific performance of Agreement did not specify a calendar date as the date fixed for its performance Limitation of 3 years would begin when the plaintiff has notice that defendant has refused performance of agreement.
- vii. (Kisanlal s/o. Bhagwandas Kalda and Ors. V/s. Harishchandra s/o. Bhimaji Santre and Anr.), Hon'ble Bombay High court, 2015 (3) ALL MR 711: Civil P.C. (1908), Limitation Act (1963), Art. 54 O. 7 R. 11(d) -Specific Relief Act (1963), S. 4 Rejection of plaint Limitation, whether a preliminary issue Suit for specific performance of the contract In view of observation made in AIR 2006 SC 1556, when no date is fixed for performance of the contract, matter falls under the second limb of Art. 54 of Limitation Act In such case issue of limitation cannot be taken as preliminary issue for dismissal of the suit. (Para 6)
- viii. Civil P.C. (1908), O. 14 R. 2(2)- Issue of Limitation Whether a preliminary Issue in view of observation made in 2006 (6) ALL MR 56 (SC) where decision on issue of law depends upon decision of fact It cannot be tried as preliminary issue - O. 14 R. 2(2) does not confer jurisdiction upon the court to try suit on mixed question of law and fact as a preliminary issue (Para 7).

- ix. *Sau. Dipali Himmat Meherwal and Anr. Vs. Shaikh Nazir Mohammad Nasir and Ors.* Hon'ble Bombay High court, 2018 (2) ALL MR 1: Civil P.C. (1908), 0.7 R.11 - Rejection of Plaintiff Application for On ground that suit is barred by provisions of law, limitation and principles of res-judicata Plaintiff is required to be rejected either for failure to disclose cause of action or if suit appears from statement to be barred by law - Suit does not appear to be barred by law after considering statement in plaintiff Issue of limitation which is mixed issue of law and fact and issue of res-judicata are not to be considered at stage of application under u/0.7 R. 11 Further, suit involves disputed questions which cannot be decided at the time of considering application u/O. 7 R. 11 Plaintiff cannot be rejected on that ground.
- x. *Ganesh Keshav Patole Vs. Sheetal Sikandar Darne& anr.,* Hon'ble Bombay High court, 2018 (6) ALL MR 660 Civil P.C. (1908), 0.7 R.11(d), S.11- Limitation Act, S.5- Rejection of Plaintiff on ground of suit barred by limitation and principles of res-judicata-Issue of res-judicata and Limitation being mixed question of facts and law cannot be decided in application u/o. 7 R.11(d)- Whether suit is barred by limitation or not will have to be decided on basis of evidence led by parties after framing of issue as to limitation On Plain reading of Plaintiff, it cannot be said that the suit is barred by Limitation- Application for rejection of plaintiff liable to be dismissed.
- xi. *Dattatreya Bhaskar Joshi & Ors. Vs. Sanjay Banurao Chaudhary,* Hon'ble Bombay High court , Writ Petition No. 15482 of 2019, -

On perusal of Para No. 8,9,10, I do not think that the plaintiff has instituted the suit with untraversed pleading about question of limitation. There is specific pleading to the effect that how the petitioners defendants are responsible for the delay in execution of sale deed and how the plaintiff constrained to issue legal notice for execution of the sale deed. Ld. Judge of the trial court has therefore, rightly observed that in facts of the case, the question of limitation as raised is mixed question of facts and law and the same cannot be determined on the basis of the application filed under order 7 rule 11 of C.P.C.. I do not find any substance in the writ petition. The writ petition is dismissed

- xii. Chhotanben & ors. Vs. Kiritbhai Jalkrushnabhai Thakkar & Ors, Hon'ble Supreme court 2018 (5) ALL MR 946(SC) Rejection of Plaint- Suit whether barred by Limitation is a triable issue, Plaint cannot be rejected at threshold- Rejection of Plaint by High Court without analyzing averments in Plaint, improper.
- xiii. Mangal Sarjerao Nikam v. Bhagwan Laxman Khadke, Hon'ble Bombay High court, Civil Revision Application No. 111 of 2021, - at the stage of deciding application under Order 7 Rule 11, court below is required to be sensitive to the pleadings and not defense.

31. The suit can be rejected under Order VII Rule 11 of the CPC only on the grounds if the suit does not disclose cause of action, relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation, failed to do so within the time prescribed or if insufficiently stamped, fails to supply requisite

stamp paper within the prescribed time on the plaint, or it is barred by law.

32.I have perused the case laws cited by the Ld. Advocate for the plaintiff. Despite several opportunities, the defendant no. 1 did not argue his application.

33.The plaintiff has filed this suit for specific performance and injunction. It is the contention of the plaintiff that for the execution for the sale deed, permission is required from the various authorities. It is submitted by both the parties that permission is required. Both the parties have asserted that the other party had to obtained permission. This factor needs to be adjudicated after parties lead evidence.

34.It is settled that while deciding application under Order VII Rule 11 of the CPC, one has to consider only plaint and documents filed along with it.

35.As per the plaint, plaintiff had sent notice dated 13.03.2012, which was received by defendants around 16.03.2012. On refusal to perform their part of the agreement, plaintiff filed the suit against the defendant within three years from the date of refusal to perform agreement.

36.In view of the case-laws cited by the plaintiff, when there is question of limitation, it must be noted that it is a mixed question of fact and

law. The contention of the defendant no. 1 that the suit is barred by limitation, needs to be adjudicated when parties lead evidence.

37. In view of the above discussion, provisions of law and facts of the case, I answer **point no.1 in negative.**

**Point No.2:**

38. In answer to point No. 2, I proceed to pass the following order:

**:: Order ::**

1. The application is rejected.
2. No order as to costs

Sd/-

Place: Uran

(Ms. G. K. R. Tandon)

Date :12.06.2025

I/c 3<sup>rd</sup> Jt Civil Judge, J.D., Uran