

ORDER BELOW EXH. 16 IN RCS NO. 157/2014

(Mohan Ramchandra Patil & ors. V/s. Jaywant Shivaji Patil)

1. Defendant has filed present application vide provisions of Order 7 Rule 11 of the Code of Civil Procedure in which he contended that, plaintiffs have filed present suit for specific performance of contract based on the agreement dated 21/05/1997, however, defendant had not executed such agreement in favour of predecessor of plaintiffs'. For the sake of moment if it is taken as a fact that such agreement was executed, but since after the death of predecessor of plaintiffs', they had issued notice on 27/11/2003 and asked for specific performance of contract. As such cause of action to file present suit arose at the time of issuance of notice and its service. However, plaintiffs have filed present suit on 28/10/2013. If all these facts are taken together it can be gathered that suit is barred by law of limitation. So he lastly requested to reject the plaint.

2. Say of plaintiffs have been called. They filed their Say vide Exh. 18 and resisted the contention of defendant. They further contended that, fact of issuance of notice dated 27/11/2003 is yet to be proved on merits, so also cause of action to file suit for specific performance of contract arises when performance is refused by other side. In this light if there contention is seen it will definitely make clear that suit is well within limitation. Application is filed only to prolong the matter. So they requested to reject present application.

3. Heard both the sides at length.

4. In the light of submissions of both the parties I have gone through relevant provisions i.e. Order 7 Rule 11 of the Code of Civil Procedure which enumerates several contingencies in which plaint can be rejected, such as, where plaint does not disclose a cause of action, where it is under valued, where it is written insufficient stamp paper and where the suit appears from the statement in the plaint to be barred by any law. Clause 'a' and 'd' are important and relevant in this matter. So far as Clause 'a' is concern, on going

through plaint itself it transpires that plaintiffs have disclosed the cause of action at paragraph No. 12 of the plaint. So, that clause 'a' would not be applicable to present case.

5. So far as Clause 'd' is concern, in order to ascertain whether suit is barred by any law or not, we have to consider the statement in plaint itself and not from the written statement. In this light if we go through the plaint it appears that, plaintiffs have made it clear that on 28/10/2013 defendant refused for performance of his part of contract and therefore cause of action arose to file present suit. It is true that there are some documents in support of defendant, however, at this moment we have to decide whether suit is barred or not from the contention in the plaint and apparently it appears that suit is not barred by law of limitation. Whether plaintiffs have issued said notice or not, whether there is substance in the contention of defendant or not can be ascertained at the time of trial. So at this moment there appears no substance in the contention of defendant. Therefore, application is rejected.

Islampur
Date 09/12/2015

Sd/-xxx
(Suhas P. Bhosale)
IV Joint Civil Judge Junior Division,
Islampur

नि.दि.मु.क्र. १५७/२०१४ मधील निशाणी १९ खालील आदेश

१. प्रतिवादींनी निशाणी १४/१ सोबत दाखल केलेली दिनांक २७/११/२००३ रोजीची नोटीस हस्ताक्षर तज्ञाकडे तपासणीसाठी पाठवावी या करीता प्रस्तुतचा अर्ज दाखल केला आहे. या अर्जावर प्रतिवादींचे म्हणणे ऐकले. त्यांनी असे कथन केले की, निशाणी १६ वरील अर्जाची चौकशी लांबविण्यासाठी प्रस्तुतचा अर्ज दाखल केला आहे. तसेच प्रकरण अद्याप चौकशीला लागलेले नाही, त्यामुळे सद्य परिस्थितीत हा अर्ज विचारात घेता येणार नाही.

२. दोन्ही पक्षकारांचा प्रदीर्घ युक्तिवाद ऐकला. त्या अनुषंगाने अभिलेखाचे अवलोकन केले असता दोन्ही पक्षकारांमध्ये दिनांक २७/११/२००३ रोजीच्या नोटीस बाबत वाद दिसून येतो. मात्र सद्य परिस्थितीत तरी प्रतिवादींना तो दस्त मान्य करण्यासाठी वादींनी नोटीस पाठविली व त्यांनी तो दस्त नाकारला अशी परिस्थिती या प्रकरणात झालेली नाही. दुसरी महत्वाची बाब म्हणजे प्रकरण अद्याप सुनावणीला सुरु झालेले नाही. या वेळी तरी वादातीत दस्त हस्ताक्षर तज्ञाकडे पाठविण्याची आवश्यकता वाटत नाही. त्यामुळे अर्ज संचित करण्यात येतो.

इस्लामपूर
दिनांक ०९/१२/२०१५

सही/-
(सुहास प्र.भोसले)
चौथे सह.दिवाणी न्यायाधीश क.स्तर,
इस्लामपूर