

ORDER ON OFFICE OBJECTION
(Passed on 05th day of February, 2021)

Read the present office objection under note-sheet dated 03.02.2021 made by the Assistant Superintendent of this Court on the suit presented by Advocate Shri. R.W. Choudhary.

2. Heard learned Advocate, for the plaintiff, Shri. Choudhary. Perused plaint and office objection.

3. As per the note-sheet, the present suit is instituted for recovery of earnest amount paid against agreement to sale dated 29.02.2016 wherein date of sale was appeared to be agreed to make on 29.12.2016 and thereby the present suit is filed beyond period of limitation and it is barred.

4. The learned Advocate for the plaintiff on said objection made submissions that the date of agreement is 29.12.2016 and part consideration amount were paid on the said date, but defendants failed to comply with the terms of said agreement and thereafter extended the date of sale till 31.03.2017 and received further part consideration amount, but again he failed to perform their part. He also made submissions that the refusal of defendants were come in knowledge of plaintiff only after non-compliance of legal notice issued to them. Thus, the present suit is filed well within three years of date of cause of action arose lastly on 28.12.2020.

5. Upon hearing the learned Advocate for the plaintiff and perusal of office objection under present note-sheet along with plaint in whole, it appears that present suit is made for recovery of earnest amount allegedly paid to defendants against the sale of subject property, which they failed to perform after complying terms of agreement for sale. It appears from the averment of the plaint that agreement was entered into on 29.02.2016 in between parties to the suit and defendants received Rs.3,00,000/- as earnest amount and date of sale agreed to be made on or before 29.12.2016. It also appears that the date of sale was extended in between the parties to be made on or before 31.07.2017

and defendants received Rs.40,000/- for necessary compliance, but they failed to execute sale-deed on the date agreed for. It is also alleged by plaintiff that defendants requested extension of time and period of sale were extended, but lastly plaintiff realize inability of defendants to execute sale being non-conversion of subject land from Class-II to Class-I and, therefore, they stated to be called upon defendants to repay earnest amount of Rs.3,40,000/- orally and later by legal notice. The date of non-compliance of notice allegedly received by defendants is reckoned as a date of cause of action and since said time suit is filed alleging to be within three years of limitation prescribed by law.

6. The provision of Section 22 of the Specific Relief Act, 1963 specifically provides that, the plaintiff may ask for refund of any earnest money in addition with the relief of specific performance of contract or alternative if his claim of specific performance is refused. Part II of the Schedule annexed with the Limitation Act, 1963 provides periods of limitation to the suits relating to contract comprising Articles 6 to 55. Article 44 provides the period of limitation in suit for money paid upon an existing consideration which afterwards fails is three years from the date of failure, the time begins to run. It depends upon whether the consideration fails at once. But, in refund of earnest money, there is no existing consideration which would afterwards fails. Thus, this Article though appeared very close to the suit for refund of earnest amount, it is not covered for. Therefore, Article 113 under Part X Suits for which there is no prescribed period is provided elsewhere in the Schedule, the period of limitation is three years when the right to sue accrues the time begins to run. This means the suit for recovery of earnest money, the period of limitation is prescribed three years from the right to sue accrues.

7. In the present case, on the bare perusal of the averment of plaint, it appears that the date of sale initially agreed to be performed on 29.12.2016 and later extended to be made on 31.03.2017 are the dates for the performance fixed in between the parties. But, no such part of performance is averred to be performed and thereby the time for specific performance is begun to run from last extended date i.e. 31.03.2017 was fixed between the parties to agreement in

view of Article 54. But, plaintiff has not instituted the suit for specific performance to ask for performance of part of defendants against agreement for sale in next three years on or before 31.03.2020.

8. Now by present suit the plaintiff asked for refund of earnest amount received by defendants stated lastly on 29.12.2016. The cause of action for refund of earnest amount is to be begun from the right of sue accrues vide Article 113.

9. From the averment of the plaint itself, the right to sue accrues to the plaintiff only on non-performance of part of defendants under agreement for sale and extended agreement under which they agreed to be executed sale on or before 31.03.2017. Thus, the date 31.03.2017 is the time where the right to sue accrues to ask for not only specific performance vide Article 54 but also refund of earnest amount vide Article 113. The plaintiff is therefore ought to have initiated the suit on or before 01.04.2020. Since the month of March 2020, specifically from 24.03.2020, the Court working is limited till last month i.e. January 2021 due to outbreak of Covid-19 pandemic and, therefore, time is extended by the orders of the Hon'ble Apex Court for filing petitions or suits in *Suo Moto WP (C) No.3/2020* titled as *In Re Cognizance For Extension of Limitation* dated 23.03.2020. Recently, the Hon'ble Supreme Court observed that extension of limitation for suits like is still operative (*M/s. S.S. Group Private Limited v. Aaditya J. Garg*, (2020 SCC OnLine SC 1050). The plaintiff's time till lock-down was not exhausted for filing suit. Since 01.02.2021, the physical working of Courts of Maharashtra is fully operational and functional. Thus, the suit presented on 03.02.2021 is well within limitation. Accordingly, the office objection raised hereunder is hereby not sustained.

Date : 05.02.2021.

(K.K.Chafale)
Civil Judge, (Jr.Dn), Wani.