

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4509 of 2024****With****CIVIL APPLICATION (FOR STAY) NO. 2 of 2024****In R/FIRST APPEAL NO. 4509 of 2024**

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NATHIBEN RAJABHAI BAVALIYA & ORS.**Versus****PARBATBHAI KANABHAI TOTA THROUGH POA MAYURSINH****CHHATRASINH JADEJA**

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Appearance:**MR. HJ KARATHIYA(7012) for the Appellant(s) No. 1,2,2.1,2.2,2.3****KARTIKKUMAR K JOSHI(8042) for the Defendant(s) No. 1**

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CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**and****HONOURABLE MR.JUSTICE SANJEEV J.THAKER****Date : 20/12/2024****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)**

Mr Harshit J. Karathiya, learned advocate for the appellants submitted that the agreement to sell was executed between the plaintiffs and the defendant. As per condition no.6, registered sale deed was to be executed within a period of 11 months from the date of the agreement to sell, which was 06.08.2013; however, there was no adherence to the said condition and the sale deed was not executed within 11 months.

2. It is submitted that the cause of action would arise from expiry of 11 months and the suit, as per Article 54 of the Limitation Act, 1963, was supposed to be filed within three years from that date; however, the suit has been filed on 30.12.2017, which aspect has been also accepted by the learned Judge. However, what weighed with the learned Judge, was that the defendant has not taken any

objection as regards the limitation. Besides, the defendant has also accepted the consideration.

3. Reliance is placed on the judgment of the Apex Court in the case of *Usha Devi & Ors. versus Ram Kumar Singh & Ors.* reported in AIR 2024 SC 4591. Pointed attention is drawn to paragraphs 8 and 9 wherein, it has been held and observed that once there is a specific date fixed for performance, the limitation period would be three years from the said date and if the suit is filed beyond the said date, it would be barred by limitation. It is also submitted that Exh.5 application, was rejected only on the ground that the suit is filed beyond the period of limitation.

4. Considered the submissions. Issue notice to the respondents, returnable on 22.01.2025. Mr Kartikkumar K. Joshi, learned advocate waives service of notice on behalf of the respondent.

5. It will be open for the appellant – applicant to request for an adjournment and let the executing Court, consider the request in view of the pendency of First Appeal before this Court, till the next date of hearing.

(SANGEETA K. VISHEN,J)

(SANJEEV J.THAKER,J)

BINOY B PILLAI