

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL REVISION APPLICATION NO. 143 of 2025**

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SURENDRABHAI SIMABHAI GAMIT

Versus

ARJUNBHAI BALUBHAI CHADHARI & ANR.

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Appearance:

MR NK MAJMUDAR(430) for the Applicant(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE SANJEEV J. THAKER**Date : 01/05/2025****ORAL ORDER**

1. The present Civil Revision Application has been filed challenging the order passed below Exh.10 in Regular Civil Suit No.3 of 224 whereby 2nd Additional Senior Civil Judge, Tapi at Vyara has rejected application of the defendant under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 [‘the CPC’ for short].

2. For the sake of convenience, the parties are referred to as per their original status before the trial Court.

3.1 It is the case of the defendant that the plaintiffs have filed Regular Civil Suit No.3 of 2024, for recovery of amount of Rs.10,00,000/-. It is the case of the plaintiff in the said suit that in the year 2013, the plaintiff saw a pamphlet and after going through the said pamphlet, he made a phone call on the mobile number given in the pamphlet which was received by the defendant. After discussion

with the defendant, as it was informed by the defendant that he is owner of the property mentioned at Mouje:Indu, Tal.Vyara, Block Survey No.122 and the defendant informed the plaintiff that the defendant is selling the plots in the said premises.

3.2 The plaintiff in the said suit has stated that the defendant informed the plaintiff that the defendants have purchased the suit property from the rightful owners and after getting required permission of the revenue authorities, the defendant shall execute sale-deed in favour of the plaintiff. Thereafter as per discussion, rate for purchase of said plot was discussed between the plaintiff and defendant. Pursuant thereto, the plaintiff had decided to purchase 12 plots and thereafter on 12.04.2013 the plaintiff decided to purchase plot nos.26 to 40 and paid amount of Rs.8,80,000/- and the plaintiff was given receipt by the defendant. Thereafter on 15.04.2013 further amount of Rs.1,20,000/- was paid to the defendant. It is the case of the plaintiff in the suit that the plaintiff has paid an amount of Rs.10,00,000/- for purchase of the above referred plots and thereafter the plaintiff came to know about the fact that defendants has committed fraud on the plaintiffs and as the plaintiff came to know about the said fact, plaintiff tried to contact defendants, but the defendant's phone showed as 'switched off'. Thereafter the plaintiff issued notice dated 14.02.2020 through his Advocate and the said notice was replied by the defendant by reply dated 26.02.2020 and in the said notice dated 26.02.2020 the defendant had admitted to make payment of Rs.10,00,000/-. It is also the case of the defendant that by registered Kabulatnama dated 26.12.2020 there was mutual understanding between the plaintiff and defendants whereby

defendant admitted that defendant shall pay an amount of Rs.10,00,000/- plus interest thereon and shall pay an amount of Rs.13,00,000/- within three months i.e. on or before 25.03.2021 and the said document was notarised document executed on 26.12.2020 and as the said amount was not paid, a police complaint was filed by the plaintiff against the defendant on 22.07.2022 and as the said amount was not paid and as defendant did not comply with the Kabulatnama, the plaintiff filed suit for recovery of amount of Rs.10,00,000/- with interest @ 6% against the defendant. The defendant filed appearance and also filed an application under provisions of Order VII Rule 11 of the CPC, vide Exh.10, on the ground that the suit that has been filed by the plaintiff is filed against the defendant in his individual capacity and that in the plaint, the plaintiff has mentioned that transaction that has taken place between the plaintiff and defendant are with Tapi Multi Trade Pvt Ltd. and defendant in the said agreement to sale had signed in the capacity of Managing Director of said Tapi Multi Trade Pvt Ltd. and, therefore, under the provisions of Order I Rule 9 of the CPC the plaint is required to be rejected being barred by law. Moreover, it has also been argued that as the suit is filed in the year 2024 and the cause of action is dated 28.06.2013, the plaint is hopelessly time barred and, therefore, plaint is required to be rejected.

3.3 After hearing the parties to the suit, the trial Court rejected the application filed under Order VII Rule 11 of the CPC. Hence, the present revision application.

4. Learned advocate for the defendant has mainly argued that relief that has been sought is pursuant to the agreement to sale which

is of the year 2013 and, therefore, plaint is barred by law as the plaintiff cannot claim any right with respect to any right that arose in the year 2013 and, therefore, the defendant has argued that the right to sue accrued in the year 2013, the present suit could not have been filed in the year 2024 and, therefore, it has been argued that learned trial Court could not have rejected the application filed under the provisions of Order VII Rule 11 of the CPC as from the plain reading of the plaint, the same is barred by law. Moreover, it has also been argued that plaintiff of the suit could not also take assistance of Section 18 of the Limitation Act. Learned advocate for the defendant has submitted that as the acknowledgment is not within period of limitation, the suit is hopelessly time barred and, therefore, order passed below Exh.10 could not have been passed by the trial Court and in view of the same it has been argued that Civil Revision Application is required to be allowed.

5.1 Having heard learned advocates for the defendant, the present is the case where the defendant himself has issued Kabulatnama dated 26.12.2020 wherein the defendants has signed the said document and has stated that in view of notice issued by the plaintiff dated 14.02.2020, the defendant agreed to pay an amount of Rs.13,00,000/- within three months i.e. on or before 25.03.2021 and if the said amount is not paid on or before 25.03.2021, within 30 days from the said date i.e. 25.03.2021, the plaintiff can file appropriate proceedings for recovery of the said amount. The fact remains that plaintiff's case is that defendant was neither owner of the property, the plaintiff has accepted the money from the defendants knowing fully well that the defendant is not owner of the property and just to

safeguard himself from the criminal matters that may arise defendant executed consent terms [Kabulatnama] on 26.12.2020 and agreed to pay said amount of Rs.10,00,000/- plus Rs.3,00,000/- interest to the plaintiff on or before 25.03.2021 and, therefore, it can be clearly established that the suit that has been filed by the plaintiff is also with respect said consent terms [Kabulatnama] dated 26.12.2020.

5.2 Moreover, in the plaint it has been stated that the defendants had agreed to make payment by virtue of consent terms arrived at between the parties on 26.12.2020 and as per the said consent terms, an amount was to be paid on or before 25.03.2021 and the suit that has been filed by the plaintiff is on 01.02.2024 and, therefore, the plaint discloses of cause of action and, therefore, when the plaintiff is also claiming right through that Kabulatnama and when the Kabulatnama is dated 26.12.2020, the limitation for filing suit would commence from 25.04.2021, in view of the fact that agreement was entered on 26.12.2020 whereby the defendant has admitted to make payment on or before 25.03.2021 and in the said agreement, if the defendant failed to make payment from 25.03.2021, the plaintiff is entitled to file suit for recovery of the said amount and, therefore, suit filed on 01.02.2024 is within period of limitation. The trial Court has rightly appreciated that from the plain reading of the plaint, it cannot be said that the plaint is barred by law more particularly provisions of Order VII Rule 11 of the CPC. Moreover, in the present suit no relief is sought for specific performance of the agreement to sale in the year 2013. Moreover the acknowledgment of liability is made after a period of limitation which creates a new cause of action, providing a fresh start to the limitation act i.e. from the point of

promise a new limitation period commences. Moreover the defendant had admitted his liability beyond the period of limitation in writing, therefore, the same creates a fresh obligation in favour of the plaintiff and would amount to a fresh contract, which can certainly be made a basis of an action for recovering the amount promised and acknowledged therein by the defendant.

5.3 Moreover, others issues which the defendant has taken in an application under Order VII Rule 11 of the CPC is non-joinder of the party i.e. though the agreement is with Tapi Multi Trade Ltd. and that the agreement in the year 2013 has been entered with Tapi Multi Trade Ltd. it is clear case that fraud has been created by the defendant and there is no company like Tapi Multi Trade Ltd. and in view of that fact entire matter requires consideration of evidence and, therefore, trial Court rightly rejected the application filed under the provisions of Order VII Rule 11 of the CPC.

5.4 In the present case, it is the case of the plaintiff that defendant has played fraud with the plaintiff and plaintiff were given impression that the defendant is owner of the premises and pursuant to the said impression that has been given by defendant, plaintiff entered into agreement in the year 2013 and now knowing that defendant neither the owner of the property nor Tapi Multi Trade Ltd. is in existence, question of executing the said agreement of the year 2013 does not arise and, therefore, plaintiffs have rightly not filed suit for specific performance for execution of agreement of the year 2013 and the suit i.e. civil suit that has been filed, is filed only with respect to agreement of consent terms entered into between the parties in the year 2020 for

recovery of amount from defendant after having agreed and thereafter not paid the said amount, the plaintiff suit cannot be stated to be barred by law.

6. For the reasons recorded above and for the above discussion, the present application is required to be dismissed and it is dismissed accordingly.

(SANJEEV J.THAKER,J)

MISHRA AMIT V.

Original copy of this order has been signed by the Hon'ble Judge.

Digitally signed by: AMIT VISHNUPRASAD MISHRA(HC00187), Principal Pvt. Secretary, at High Court of Gujarat on 09/05/2025 18:22:39