

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CIVIL REVISION APPLICATION NO. 560 of 2024**

=====

NAISARG GALAXY CORPORATION THROUGH ITS PARTNER RAJU  
DAMUBHAI PATEL

Versus

KUNDANBEN N PATEL & ANR.

=====

Appearance:

MR. NISHIT P GANDHI(6946) for the Applicant(s) No. 1

=====

**CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

**Date : 18/12/2024**

**ORAL ORDER**

Learned advocate Mr. Nishit P. Gandhi submits that the applicant is the original defendant No.1 and the respondent No.1 herein is the original plaintiff, who instituted the suit being Special Civil Suit No.30 of 2019 for specific performance, declaration and for permanent injunction, wherein the applicant-defendant No.1 filed an application under Order VII Rule 11 for rejection of the plaint, which came to be rejected by the learned trial court vide the impugned order dated 03.09.2024, aggrieved with which, the applicant is here before this Court with the present application. Learned advocate Mr. Gandhi further submits that the applicant-defendant No.1 and the respondent No.1-plaintiff entered into an agreement to sell, wherein it was agreed between the parties to make the payment of total sale consideration within a period of 12 months from the date of execution of the agreement to sell including the other expenses like fixed maintenance etc., which the respondent No.1-plaintiff failed to do, and as such,

due to breach of condition of the contract, the agreement to sell itself became void and, therefore, at that point of time, after deducting the 10% amount from the earnest amount, rest of the amount was repaid by the applicant. Not only that, the alleged agreement to sell was executed on 25.03.2011, whereas the suit seeking specific performance of the same was filed in the year 2019, and as such, there is a gross delay of eight years in preferring the suit is barred by law of limitation, and therefore, the application preferred under Order VII Rule 11 is required to be entertained, and the impugned judgment and order dated 03.09.2024 passed below Exh.25 application is required to be quashed and set aside. In support of his submissions, learned advocate Mr. Gandhi has put reliance upon the Division Bench decision of this Court in the case of Manubhai Mayabhai Ahir vs. Hemaben Ashikali Narsi, First Appeal No.3791 of 2019, decided on 26.06.2023.

considering the aforesaid, issue notice, making it returnable on 29.01.2025.

Till then, let there be an ad-interim relief in terms of Para-8(C ).

**(DIVYESH A. JOSHI,J)**

VAHID