

Amberkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 20 OF 2024

Parbat Manji Gothi .. Applicant

Versus

M/s. Proviso Builders and Developers & Ors. .. Respondents

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- Mr. Onkar Chandurkar a/w Mr. Jotiram R. Jadhav for Applicant
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 23, 2024

P. C.:

1. Heard Mr. Chandurkar, learned Advocate for Applicant.
2. Perused the impugned order dated 11.09.2023 passed below Exh. 39 in Special Civil Suit No. 193 of 2018. This was an Application filed by the Applicant who is Defendant No. 4 before the Trial Court under Order 7, Rule 11 of the CPC. Briefly stated the Suit filed by the Plaintiffs seeks specific performance of MOU dated 05.05.2010. Admittedly, this is an unregistered document executed between the Plaintiff on one side and Defendant Nos. 1 to 3 on the other side. In addition to specific performance, the suit plaint also seeks cancellation of the registered document dated 18.06.2010 executed by Defendant No. 1 in favour of Defendant No.4 in respect of the very same suit property. Perusal of the suit plaint reveals that the aforementioned facts have been in fact averred by the Plaintiff in paragraph No. 25

thereof. However, curiously in paragraph No. 26, there is reference to the previous suit being Special Civil Suit No. 165 of 2011 filed by Defendant No. 4 which has been dismissed on 01.12.2012. Mr. Chandurkar seeks time to take appropriate instructions on the status of this Suit as to whether it has been restored or otherwise and shall inform the Court accordingly on the next date.

3. *Prima facie* it is seen that filing of Special Civil Suit No. 193 of 2018 in the above facts is clearly hit by limitation. By merely stating that limitation is a mixed question of law and facts and is a triable issue cannot be a ground to allow the Suit to be filed for specific performance of a document in respect of the very property for which the registered document exists. Both these documents namely the document of which specific performance is sought as also the registered document qua the suit property date back to the year 2010 and the suit is filed for the first time in 2018. These are very strong facts and circumstances and therefore the impugned order needs intervention subject to information being given about the suit filed by Defendant No. 4.

4. In view of the above, an arguable case has been made out by Mr. Chandurkar for issuance of notice and stay of the impugned order dated 11.09.2023. Hence, the order dated 11.09.2023 stands stayed.

5. Hence, issue notice to the Respondents made returnable on 20.02.2024. Humdast permitted. In addition to Court's notice, Applicant is directed to serve this CRA along with copy of this order to the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-on or before the next date, if so desired. Rejoinder if any shall be filed on or before the next date.

6. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in absence of Respondents.

7. Stand over to **20th February, 2024.**

Amberkar

[MILIND N. JADHAV, J.]

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