

ORDER BELOW EXH. 17 IN RCS NO.01/2018

The defendant no. 1 to 6 have filed present application under order VII rule 11(d) of Code of Civil Procedure. It is the contention of these defendants that plaintiff has filed present suit on the basis of alleged agreement to sale dated 11.11.1999. As per limitation that, the plaintiff has to file suit within three years from the date of agreement. Therefore, the plaint is barred by lawful limitation. In support of their contentions they have relied upon ratio laid down in the case of Mr. M.V. Sayal Vs. Bharat Heavy Electrical Ltd. (BHEL) & Others reported in 2008(102) DRJ 286. wherein it is held that right to sue accrued when order rejecting the application for voluntarily retirement was passed on. Same has been decided by Writ Court. Court considered suit barred by limitation and by the principle of res judicata.

02- On the contrary, plaintiff has filed his say at Exh.22. It is his contention that alleged agreement to sale is executed on 11.11.1999. But it was decided to execute sale deed within one month from getting permission of Collector. He has further stated that plaintiff has firstly come to know refusal from defendants on 06.11.2017 and

also he has issue notice dated 05.12.2017. According to him, the cause of action arose on 06.11.2017. Therefore, the present application is not tenable in the eye of law. Lastly, prayed that application be rejected with costs.

03- Heard both sides. From the rival contentions of both the parties, following points are arisen for my determination along with my findings thereon for the reasons stated herein below :

Sr. No	POINTS	FINDINGS
1	Whether plaint is liable to be rejected on the count of barred by law of limitation as per order VII rule 11(d) of Code of Civil Procedure ?	In the negative.
2	What order ?	...As per final order

REASONS

As to point No.1 :-

04- The provisions of Order VII Rule 11 of the Code of Civil Procedure categorically provides for rejection of plaint, whenever the suit appears from statement in plaint to be barred by any law. It includes law of limitation. It is

well settled that plaint can be rejected only when on reading of the plaint itself, either it does not disclose the cause of action or it appears to be barred by some law. The Court are not entitled to travel beyond the pleadings of the plaint. If defendants plead that suit is barred by some law because of some additional factors pleaded by him then he has to establish these facts.

05- Considering above legal position, the facts of present case needs to be ascertained on the basis of averments made in the plaint. On perusal of plaint (Exh.1) the plaintiff has specifically mentioned that he has come to know refusal of part of performance of contract from defendants on 05.11.2017. On perusal of facts of the present suit, it appears that defendants have challenged the plaint as barred by limitation. It is their contention that plaintiff has to file present suit within three years from the date of agreement. In the present case, the question of limitation is mixed question of facts and law and it is required to be decided after evidence of both parties.

06- At this stage, I would like to refer article-54 of the Limitation Act. It provides that if the date is fixed for

performance of agreement, then non-compliance of the agreement on the date would give cause of action to file suit for specific performance within three years from the date fixed. However, when no such date is fixed, limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that defendant has refused the performance of agreement. The case at hands, admittedly does not cause in the first category of article-54 of the Limitation Act because, no date was fixed in the alleged agreement for its performance. The case would thus be governed by second category namely when plaintiff has a notice that the performance was refused. In plaint para No.3 and 6, the plaintiff specifically stated that he has a notice that performance was refused by the defendants on 05.11.2017. In such situation, I do not find merit in the submission of learned advocate for the defendants that the suit is barred by law of limitation as claimed by defendants.

07- The facts of present case and facts of above cited case are totally different. Present case is regarding specific performance of contract whereas, above cited case regarding dismissal of service. Therefore, the ratio laid down in the above cited case would not be helpful to the

case at hands. Therefore, I do not find any merit in the submission of defendants that the suit is barred by law of limitation. Hence, I answer the point no.1 in the negative.

08- Considering above all discussion, application of the defendants is required to be rejected. Hence, I pass the following order :

ORDER

- 1] The application (Exh.17) is rejected.
- 2] No order as to costs.

Sd/..

Date:-11-02-2019.
Kavathe-Mahankal.

(Manoj C. Nepte)
Jt. Civil Judge, Junior Division,
Kavathe-Mahankal.