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URVASHIBEN & ANR.

v.

KRISHNAKANT MANUPRASAD TRIVEDI

(Civil Appeal Nos. 12070-71 of 2018)

B

DECEMBER 14, 2018

[UDAY UMESH LALIT AND R. SUBHASH REDDY, JJ.]

Code of Civil Procedure, 1908 – Or.VII, r.11(d) – Rejection of plaint on the ground that suit was barred by limitation – Respondent-plaintiff case was that the predecessor-in-title of the appellants-defendants had agreed to sell the suit property to him and executed agreement to sell for a sale consideration – Time was not the essence of the contract – Total consideration amount was paid by the respondent – Respondent visited the property after about 25 years and found that the suit property was sold to third party – Suit filed for specific performance of agreement to sell by the respondent – Appellant-defendant filed application u/Or.VII, r.11(d) of CPC to reject the plaint on the ground that suit was barred by limitation – Application allowed by the trial Court – However, order was set aside by the High Court – On appeal, held: When rejection of plaint is sought in an application filed u/Or.VII, r.11 same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application – In instant case, it is a matter for trial to record correctness or otherwise of allegations made in the plaint – The merits and demerits of the matter cannot be gone into, while deciding the application filed u/Or.VII, r.11 of CPC – At this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in case on hand, it cannot be said that suit was barred by limitation – Furthermore, it is settled that when the time is not fixed in the agreement, the 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 the agreement – The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial – Limitation Act, 1963 – Art.54.

Dismissing the appeals, the Court

HELD: 1. From a reading of the Article 54 of Limitation Act, 1963, it is clear that when the date is fixed for performance,

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limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under O.VII R.11, same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application. As averred in the plaint, it is the case of the plaintiff that even after payment of the entire consideration amount registration of the document was not made and prolonged on some grounds and ultimately when he had visited the site, he had come to know that the same land was sold to third parties and appellants have refused performance of contract. In such event, it is a matter for trial to record correctness or otherwise of such allegation made in the plaint. In the suits for specific performance falling in the second limb of the Article, period of three years is to be counted from the date when it had come to the notice of the plaintiff that performance is refused by the defendants. For the purpose of cause of action and limitation when it is pleaded that when he had visited the site, he had come to know that the sale was made in favour of third parties and the appellants have refused to execute the Sale Deed in which event same is a case for adjudication after trial but not a case for rejection of plaint under O.VII R.11(d) of CPC. [Para 12][1249-D-G]

2. In cases falling in second limb of Article 54, finding can be recorded only after recording evidence. Furthermore, when the time is not fixed in the agreement, the 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 the agreement. [Para 14][1251-E-F]

3. In the instant case, the merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a

**A ground for rejection of plaint under O.VII R.11(d) of CPC.
[Para 15][1252-A-C]**

- Gunwantbhai Mulchand Shah & Ors. v. Anton Elis Farel & Ors.* (2006) 3 SCC 634 : [2006] 2 SCR 886;
B *Rathnavathi & Anr. v. Kavita Ganashamdas* (2015) 5 SCC 223 ; *Balsaria Construction (P) Ltd. v. Hanuman Seva Trust & Ors.* (2006) 5 SCC 658 ; *Chhotanben & Anr. v. Kiritbhai Jalkrushnabhai Thakkar & Ors.* (2018) 6 SCC 422 : [2018] 3 SCR 422 – relied on.
- Prabhakar v. Joint Director, Sericulture Department & Anr.* (2015) 15 SCC 1 ; *T. Arivandandam v. T.V. Satyapal & Anr* (1977) 4 SCC 467 : [1978] 1 SCR 742 ; *Hardesh Ores (P) Ltd. v. Hede & Co.* (2007) 5 SCC 614 : [2007] 6 SCR 608 ; *Dilboo (Smt.) (Dead) by LRs & Ors. v. Dhanraji (Smt.) (Dead) & Ors.* (2000) 7 SCC 702 : [2000] 3 Suppl. SCR 214 ; *I.T.C. Limited v. Debts Recovery Appellate Tribunal & Ors.* (1998) 2 SCC 70 : [1997] 6 Suppl. SCR 683 ; *Raj Narain Sarin (Dead) through LRs. & Ors. V. Laxmi Devi & Ors.* (2002) 10 SCC 501 ; *N.V. Srinivasa Murthy & Ors. v. Mariyamma (Dead) by Proposed LRs. & Ors.* (2005) 5 SCC 548 : [2005] 1 Suppl. SCR 411 ; *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* (2017) 13 SCC 174 : [2017] 5 SCR 294 ; *Church of Christ Charitable Trust & Educational Charitable Society v. Ponnamman Educational Trust* (2012) 8 SCC 706 : [2012] 6 SCR 404 ; *Madina Begum & Anr. v. Shiv Murti Prasad Pandey & Ors.* (2016) 15 SCC 322 : [2016] 5 SCR 92 ; *Ahmadsahab Abdul Mulla(2)(Dead) by Proposed LRs. v. Bibijan & Ors.* (2009) 5 SCC 462 : [2009] 5 SCR 476 – referred to.

Case Law Reference

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|----------|-------------------------|-------------|---------------|
| G | (2015) 15 SCC 1 | referred to | Para 7 |
| | [1978] 1 SCR 742 | referred to | Para 7 |
| | [2007] 6 SCR 608 | referred to | Para 7 |
| | [2000] 3 Suppl.SCR 214 | referred to | Para 7 |
| H | [1997] 6 Suppl. SCR 683 | referred to | Para 7 |

(2002) 10 SCC 501	referred to	Para 7	A
[2005] 1 Suppl. SCR 411	referred to	Para 7	
[2017] 5 SCR 294	referred to	Para 7	
[2012] 6 SCR 404	referred to	Para 7	
[2006] 2 SCR 886	relied on	Para 8	B
(2015) 5 SCC 223	relied on	Para 8	
[2016] 5 SCR 92	referred to	Para 8	
[2018] 3 SCR 422	relied on	Para 8	
[2009] 5 SCR 476	referred to	Para 14	C
(2006) 5 SCC 658	relied on	Para 14	

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 12070-12071 of 2018.

From the Judgment and Order dated 10.07.2018 of the High Court of Gujarat at Ahmedabad in First Appeal No. 160 of 2018 with Civil Application No. 1 of 2018. D

Anshin H. Desai, Sr. Adv., Shiv Mangal Sharma, Parth J. Contractor, Saurabh Rajpal, Kartikey Bhatt, M/S. Aura & Co., Advs. for the Appellants.

Dushyant A. Dave, Ms. Meenakshi Arora, Sr. Advs., Ms. Monisha Handa, Mohit D. Ram, Advs. for the Respondent. E

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. Leave granted.

2. These civil appeals are preferred by the defendants in Civil Suit No.930 of 2017, on the file of the City Civil Court, Ahmedabad, aggrieved by the judgment and decree of the High Court of Gujarat dated 10.07.2018 passed in Regular First Appeal No.160 of 2018 and Civil Application No.1 of 2018. F

3. The respondent-plaintiff has filed Civil Suit No.930 of 2017 for specific performance of the Agreement to Sell dated 13.03.1992 with regard to suit schedule property, i.e. Final Plot No.147 of Town Planning Scheme No.3 of Mouje Shekhpur-Khanpur of Ahmedabad, admeasuring 2821 Sq.Mtrs. It is the case of the plaintiff that the predecessor-in-title of the appellant-defendants, one Chaitanyabhai Patel, had agreed to sell G H

- A the suit schedule property to him and execute Agreement of Sale / Sale Deed for a sale consideration of Rs.32 lacs. The total consideration amount of Rs.32 lacs was paid during the period from 15.01.1990 to 05.09.1991. It is stated that such payments are acknowledged by vouchers. It was the case of the respondent-plaintiff that, time was not the essence of the contract, and citing financial problems, the Sale Deed
- B was not executed. It is alleged that deceased Chaitanyabhai Patel has given trust and belief that he will execute the Sale Deed. However, recently when the respondent-plaintiff had visited the suit schedule property on 25.05.2017 he has come to know that the said property was sold to third party in view of increase in prices. It is alleged in the plaint
- C that the appellant-defendants have expressed that they will not execute the Sale Deed. Hence, the suit is filed.

4. In the aforesaid suit, the appellant-defendants have filed application under Order VII Rule 11(d) of the Code of Civil Procedure (CPC) to reject the plaint on the ground that suit is barred by limitation.
- D The said application was contested by the respondent herein. However, trial court, by order dated 27.12.2017, allowed the application and ordered to reject the plaint.

5. As against the same, respondent-plaintiff preferred Regular First Appeal No.160 of 2018 before the High Court of Gujarat at Ahmedabad. By the judgment and decree dated 10.07.2018, the High
- E Court has allowed the appeal filed by the respondent by setting aside the order of the trial court dated 27.12.2017. As against the same, these civil appeals are filed.

6. We have heard Sri Anshin H. Desai, learned senior counsel for the appellants and Sh. Dushyant Dave, learned senior counsel for the
- F respondent-plaintiff.

7. In these appeals, it is contended by Sri Desai, learned senior counsel appearing for the appellants that the alleged Agreement to Sell is dated 13.03.1992 and the suit is filed in the year 2017, i.e., after a period of 25 years and even according to the case of the respondent-
- G plaintiff there is no communication at all in between the period from 1992 to 2017. It is submitted that except stating that he had visited the site on 25.05.2017 on which date he has come to know the said plot is sold to third parties, there is nothing on record to show that the suit is within limitation. Referring to Article 54 of the Limitation Act, 1963 it is
- H contended by learned counsel that even in absence of prescribing time

for executing the Sale Deed, the period of three years is to be computed from the date of refusal. It is submitted that by waiting for a period of 25 years and by merely stating that he had visited the site on 25.05.2017 on which date, the appellants have refused to execute the Sale Deed, such a suit is filed. It is submitted that the suit filed is frivolous, vexatious and ex-facie barred by limitation. It is contended that even in absence of fixing any period for executing the Sale Deed, it is not open to respondent-plaintiff to file the suit after 25 years of alleged Sale Deed / Agreement to Sell. It is further stated that the so-called Agreement to Sell is unregistered one, not supported by any payments through cheque. Vaguely stating that entire amount of consideration is paid, by way of cash during the period from 15.01.1990 to 05.09.1991, the said suit is filed. It is contended by learned counsel that a well reasoned order passed by the trial court is set aside by the High Court without recording any justifiable reasons. In support of his case for rejection of plaint under O.VII R.11, learned counsel has placed reliance on judgment of this Court in the case of *Prabhakar v. Joint Director, Sericulture Department & Anr.*¹; *T. Arivandandam v. T.V. Satyapal & Anr.*²; *Hardesh Ores (P) Ltd. v. Hede & Co.*³; *Dilboo (Smt.) (Dead) by LRs & Ors. v. Dhanraji (Smt.) (Dead) & Ors.*⁴; *I.T.C. Limited v. Debts Recovery Appellate Tribunal & Ors.*⁵; *Raj Narain Sarin (Dead) through LRs. & Ors. V. Laxmi Devi & Ors.*⁶; *N.V. Srinivasa Murthy & Ors. v. Mariyamma (Dead) by Proposed LRs. & Ors.*⁷; *Madanuri Sri Rama Chandra Murthy v. Syed Jalal*⁸ and in the case of *Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust*⁹.

8. On the other hand Sh. Dushant Dave, learned senior counsel appearing for the respondent has submitted that the appellant-defendants sought rejection of the plaint under O.VII R.11(d) of the CPC only on the ground that suit is barred by limitation. It is the contention by the learned counsel that undisputedly time was not the essence of the contract,

¹(2015) 15 SCC 1

²(1977) 4 SCC 467

³(2007) 5 SCC 614

⁴(2000) 7 SCC 702

⁵(1998) 2 SCC 70

⁶(2002) 10 SCC 501

⁷(2005) 5 SCC 548

⁸(2017) 13 SCC 174

⁹(2012) 8 SCC 706

- A in which event as per Article 54 of the Limitation Act 1963, the period of limitation is three years from the date of refusal. It is submitted that the limitation being a mixed question of fact and law, whether the suit is filed within a period of three years from the date of refusal, is a triable issue, which can be adjudicated only after trial but same is no ground for rejection of the plaint at this stage. It is submitted that for the purpose of
- B considering the application under O.VII R.11(d), plain averments in the plaint are to be seen and no other ground can be a ground for rejection of the plaint, under O.VII R.11(d). It is submitted that whether, from the averments in the plaint in a given case, plaint is to be rejected or not under O.VII R.11, is to be considered with reference to facts of each
- C case and from the case on hand, it cannot be said that suit is barred by limitation, only by looking at the averments in the plaint. Learned counsel has contended that all the citations by learned counsel for the appellants are not applicable to the facts of the case on hand and, in support of his arguments, reliance is placed in the case of *Gunwantbhai Mulchand Shah & Ors. v. Anton Elis Farel & Ors.*¹⁰; *Rathnavathi & Anr. v. Kavita Ganashamdas*¹¹; *Madina Begum & Anr. v. Shiv Murti Prasad Pandey & Ors.*¹² and *Chhotanben & Anr. v. Kiritbhai Jalkrushnabhai Thakkar & Ors.*¹³.
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9. Having heard learned counsel on both sides, we have perused the order passed by the trial court as well as the High Court and other

E material placed on record.

10. The trial court has allowed the application filed by the appellant-defendants, by holding a finding that respondent-plaintiff, by clever drafting, has created illusion of cause of action and stated that cause of action has arisen on 25.05.2017, but he failed to give justifiable explanation
- F for unreasonable delay in filing the suit. Trial court further held that when the plaintiff has not taken any action for 25 years, by clever drafting, the plaintiff cannot bring an action within the period of limitation. Therefore, it has held that suit being barred by limitation, attracts rejection under O.VII R.11(d) of CPC. The High Court has set aside the order of the trial court by recording a finding that going by the plain averments in
- G the suit, it cannot be stated that the same is barred by limitation.

¹⁰(2006) 3 SCC 634

¹¹(2015) 5 SCC 223

¹²(2016) 15 SCC 322

H ¹³(2018) 6 SCC 422

11. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under O.VII R.11(d) of the CPC. Equally, it is well settled that for the purpose of deciding application filed under O.VII R.11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the Limitation Act, 1963 prescribes the limitation of three years, for suits for specific performance. The said Article reads as under :

Suits for Specific Performance	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused
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12. From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under O.VII R.11, same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application. As averred in the plaint, it is the case of the plaintiff that even after payment of the entire consideration amount registration of the document was not made and prolonged on some grounds and ultimately when he had visited the site on 25.05.2017 he had come to know that the same land was sold to third parties and appellants have refused performance of contract. In such event, it is a matter for trial to record correctness or otherwise of such allegation made in the plaint. In the suits for specific performance falling in the second limb of the Article, period of three years is to be counted from the date when it had come to the notice of the plaintiff that performance is refused by the defendants. For the purpose of cause of action and limitation when it is pleaded that when he had visited the site on 25.05.2017 he had come to know that the sale was made in favour of third parties and the appellants have refused to execute the Sale Deed in which event same is a case for adjudication after trial but not a case for rejection of plaint under O.VII R.11(d) of CPC.

13. Counsel for the appellants has placed reliance on the judgment in the case of *Prabhakar* (supra). In the above said case, this Court has held that, even where no limitation period is prescribed by the Statute,

- A courts apply doctrine of delay/laches/acquiescence and non-suit litigants who approach court belatedly without justifiable explanation. Delay and laches are to be examined with reference to facts of each case and the said judgment is not helpful to support the case of the appellant inasmuch as this matter arises out of an application filed under O.VII R.11(d) of the CPC. The judgment in the case of *T. Arivandandam* (supra) pertains to eviction from tenanted premises which was contested by the tenant. In the said case where rejection of plaint under O.VII R.11(d) was considered on the ground that plaint does not disclose cause of action but not a case for rejection of plaint on the ground of limitation. In the case of *Hardesh Ores* (supra) it was the case falling in the first limb of Article 54 of the Limitation Act 1963 but not a case falling under second limb, where the time is not the essence of the contract. In the judgment in the case of *Dilboo (Dead)* (supra) this Court has considered relevant principles of applicability of O.VII R.11 of CPC. Equally, the case of *I.T.C. Limited* (supra) is a case concerning rejection of plaint under O.VII R.11(a) but not case of rejection on the ground of limitation. In the case of *Raj Narain Sarin* (supra) the suit was filed after 40 years after execution of the Sale Deed and as a fact it was found that Sale Deed was to the knowledge of the plaintiff and he had not taken any steps to declare the Sale Deed invalid. In that context, the order passed under O.VII R.11 was confirmed by this Court. In the case of *N.V. Srinivasa* (supra) the suit is for declaration but not for specific performance and in the said suit having regard to the facts of the case this Court has held that suit for declaration filed by the plaintiff is not maintainable. In the case of *Madanuri Rama* (supra) the suit was filed seeking cancellation of Sale Deed on the ground that property in question is a waqf property which cannot be sold to a private party. The aforesaid case is a case not concerning limitation under Article 54 of the Limitation Act 1963.

14. On the other hand, judgment in the case *Gunwantbhai* (supra) this Court has held as under :

- G “8. We may straightaway say that the manner in which the question of limitation has been dealt with by the courts below is highly unsatisfactory. It was rightly noticed that the suit was governed by Article 54 of the Limitation Act, 1963. Then, the enquiry should have been, first, whether any time was fixed for performance in the agreement for sale, and if it was so fixed, to hold that a suit
H filed beyond three years of the date was barred by limitation unless

any case of extension was pleaded and established. But in a case where no time for performance was fixed, the court had to find the date on which the plaintiff had notice that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof. We have explained the position in the recent decision in *R.K. Parvtharaj Gupta v. K.C. Jayadeva Reddy* (2002) 2 SCC 428. In the case on hand, there is no dispute that no date for performance is fixed in the agreement and if so, the suit could be held to be barred by limitation only on a finding that the plaintiffs had notice that the defendants were refusing performance of the agreement. In a case of that nature normally, the question of limitation could be decided only after taking evidence and recording a finding as to the date on which the plaintiff had such notice. We are not unmindful of the fact that a statement appears to have been filed on behalf of the plaintiffs that they did not want to lead any evidence. The defendants, of course, took the stand that they also did not want to lead any evidence. As we see it, the trial court should have insisted on the parties leading evidence on this question or the court ought to have postponed the consideration of the issue of limitation along with the other issues arising in the suit, after a trial.”

In the aforesaid case, it is clearly held that in cases falling in second limb of Article 54 finding can be recorded only after recording evidence. The said view expressed by this Court supports the case of the respondent-plaintiff. In the judgment in the case of *Rathnavathi* (supra) in paragraphs 42 and 43 it was clearly held that when the time is not fixed in the agreement, the 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 the agreement. In the judgment in the case of *Ahmadsahab Abdul Mulla(2)(Dead) by Proposed LRs. v. Bibijan & Ors.*¹⁴ while interpreting Article 54 of the Limitation Act, it is held that words “date fixed for the performance” is a crystallised notion. The second part “time from which period begins to run” refers to a case where no such date is fixed. In the case of *Balsaria Construction (P) Ltd. v. Hanuman Seva Trust & Ors.*¹⁵ and *Chhotanben* (supra) this Court clearly held that issue of limitation, being a mixed question of fact and law, is to be decided only after evidence is adduced.

¹⁴(2009) 5 SCC 462

¹⁵(2006) 5 SCC 658

- A 15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.
- B
- C 16. For the aforesaid reasons, we do not find any illegality in the judgment of the High Court, so as to interfere with the same in these appeals. Accordingly, these appeals are dismissed, being devoid of merit, with no order as to costs. We make it clear that we have not expressed any opinion on the merits of the matter, including on the issue of limitation.
- D It is open for the trial court to frame issues, including the issue of limitation, and decide the matter on its own merits. As the alleged agreement is of the year 1992, trial court to dispose of the suit, as expeditiously, as possible.