



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 7964 OF 2025
IN
COMMERCIAL SUIT NO. 39 OF 2015**

Victoria Enterprises Limited Applicant

IN THE MATTER BETWEEN

Dnm Trustee Service Private Ltd ... Plaintiff

Vs

Victoria Enterprises Limited and ... Respondent
Ors

Mr. Chirag Mody a/w. Mr. Parag Kabadi, Ms. Drishti Gudhaka
i/b. DSK Legal for the Plaintiff.

Mr. Manish N. Jain a/w. Ms. Ritu G. Gehlot i/b. S.M. Jain
Associates for Applicant in IA/7964/25 and for Defendant
No.1 in COMS/39/15.

CORAM : GAURI GODSE, J.

DATED : 9th MARCH 2026

JUDGMENT:

1. This application is filed by defendant no.1 under Order VII Rule 11(a) and (d) of the Civil Procedure Code, 1908 ('CPC') for the rejection of the plaint. Learned counsel for defendant no.1 submits that the suit is time-barred as the plaintiff seeks specific performance of the contract dated

2nd February 2008 by filing the suit on 29th September 2015. He submits that, under the agreement, possession was to be handed over on or before 31st March 2008. Hence, the suit filed in 2015 is barred by limitation. He further points out that the plaintiff has also prayed for damages. The prayer for damages would be covered under Article 55 of the Limitation Act. However, to join a cause of action, the plaintiff is required to seek leave under Order II Rule 4 of the CPC, which has not been sought. Hence, even the prayer for damages would be barred by the limitation period.

2. Learned counsel for defendant no.1, further submits that the agreement dated 2nd February 2008, was executed by defendant no.1 in favour of defendant nos. 3 and 4. The plaintiff claims to be the trustee of the property; hence, the suit filed only by the sole trustee would not be maintainable. The plaintiff has not pleaded the vesting of any right in favour of the plaintiff to maintain the suit. Hence, there is no cause of action available to the plaintiff to file the present suit. Learned counsel for defendant no.1, therefore, submits that neither the deed of trust annexed to the plaint nor the partition deed relied upon by the plaintiff would be relevant for

any cause of action being available for the plaintiff to maintain the suit. Hence, the plaint is liable to be rejected at the threshold on the ground that no cause of action is available to the plaintiff and the suit is barred by limitation.

3. Learned counsel for the plaintiff submits that by a registered agreement dated 2nd February 2008, the suit property was conveyed to defendant nos. 3 and 4. By a registered partition deed dated 15th February 2013, defendant nos. 3 and 5 included the suit property in the common hotchpotch of the joint family property. Accordingly, the suit property vested in the mother of defendant nos. 3 and 4, i.e. Smt. Jamna S. Lawani. By the registered deed of rectification dated 25th May 2014, the deed of execution of the partition deed was rectified. Thereafter, the mother executed the deed of discretionary trust on 24th March 2014, and all her properties were settled in the name of Lalwani family trust for the benefit of defendant nos. 2, 3 and 4. Defendant No. 2 is the brother of defendant nos. 3 and 4.

4. Learned counsel for the plaintiff submits that defendant no.1 had failed to comply with the terms and conditions of the contract. Despite calling upon defendant no. 1 to hand over

possession, no compliance was made. Hence, the notice dated 5th March 2015 was issued by the defendant nos. 3 and 4. Thereafter, again by letter dated 10 April 2015, a reminder was issued to defendant no.1 on behalf of defendant nos. 2 to 4, and the Lalwani family trust through its trustee, i.e. the plaintiff. Since defendant no.1 failed to comply with the obligation, the present suit was filed. Learned counsel for the plaintiff relies upon the relevant averments in the plaint paragraph nos. 5 to 9 regarding the plaintiff's right to file the suit in view of the deed of trust executed by the mother of defendant nos. 2, 3 and 4. He also relies upon the relevant averments regarding calling upon defendant no. 1 to comply with the terms and conditions of the registered agreement in favour of defendant nos. 3 and 4.

5. Learned counsel for the plaintiff submits that at the stage of hearing of the interim application, a statement was made on behalf of defendant no.1, which is recorded in an order dated 10th February 2020, passed in the Notice of Motion No. 7 of 2015. Defendant No. 1 had made a statement that he is ready and willing to hand over the possession, i.e. Unit Nos. 503 and 504. The Notice of Motion

was accordingly listed for compliance. Thereafter, by order dated 9th June 2022, the plaintiff's application for amendment was allowed on the ground that the possession of the units was handed over. Accordingly, the plaintiff amended the suit and deleted the prayers seeking possession of the two units as prayed in the original prayer clause (b). By way of amendment, the plaintiff added a prayer for a declaration that defendant no.1 was bound to specifically perform all the terms and conditions of the agreement dated 2nd February 2008, by identifying and demarking the parking space. By way of amendment, the plaintiff also prayed for a declaration that defendant no.1 was bound and liable to pay compensation. This amendment is carried out pursuant to the order dated 9th June 2022. Learned counsel for the plaintiff submits that even thereafter, another application was filed regarding the parking space and completion of amenities as per the original agreement. He relies upon the order dated 6th March 2024, regarding the statement on behalf of defendant no. 1 that possession of 5 car spaces would be handed over to the plaintiff within one week. Thereafter, time was extended to comply with the statement. Learned counsel for the plaintiff submits that in view of the various orders passed

by this court, the grievance regarding the parking space has also been worked out, and grievances regarding the obligations on the amenities still are unresolved.

6. Learned counsel for the plaintiff, therefore, submits that the application for rejection of the plaint is filed only with an intention to protract further proceedings in the suit. He submits that in view of the deed of partition and the deed of trust, the plaintiff is entitled to maintain the suit as contemplated under Order XXXI Rule 1 of the CPC. In view of the specific pleadings in the plaint, the plaintiff would be entitled to lead evidence to support the cause of action as pleaded in the plaint and also support the contentions regarding the suit being within limitation in view of Section 22 of the Limitation Act, as the prayers in the suit are based on the continuing breach of the obligations. He therefore submits that the suit raises triable issues and the plaint cannot be rejected at the threshold.

7. Learned counsel for the plaintiff relies upon the well-settled legal principles by the Hon'ble Apex Court in ***Samruddhi Co-operative Housing Society Vs Mumbai Mahalaxmi Construction Private Limited***¹. He submits that the

¹ (2022) 4 SCC 103

Hon'ble Apex Court held that in view of continuing wrong, the plaintiff would be entitled to maintain the suit for seeking relief on the ground that there is continuing breach of the terms of contract and thus, all the plaintiffs would be entitled to rely upon Section 22 of the Limitation Act to support the cause of action for maintaining the suit within limitation.

8. I have carefully perused the pleadings and the supporting documents relied upon by the plaintiff. The facts regarding execution of the agreement as pleaded in the plaint and referred to the aforesaid paragraphs are not disputed. Learned counsel for defendant no.1 has relied upon Order II Rule 4 of the CPC to support his submissions that the suit would be barred by limitation in view of Articles 54 and 58 of the Limitation Act, as the prayers in the suit are based on different causes of action. Learned counsel for defendant no.1 has further pointed out that handing over possession was without prejudice to the rights and contentions of defendant no.1. Hence, defendant no.1 is entitled to pray for rejection of the plaint at the threshold. He submitted that the handing over of the possession would not change the cause of action.

9. However, in my opinion, so far as the plaintiff's right to maintain the suit is concerned, it is supported by the documents of deed of partition and the deed of creation of a discretionary trust by the mother of defendant nos. 2 to 4. All these facts are substantially pleaded in the plaint and also supported by the documents. I have perused the documents. In view of the execution of the documents and the creation of trust, the plaintiff would be entitled to maintain the suit as contemplated under Order XXXI Rule 1 of the CPC. Hence, there is no substance in the objection raised that there is no cause of action available for the plaintiff to maintain the suit. The allegation of a different cause of action by referring to Order II Rule 4 of the CPC cannot be a ground to reject the plaint at the threshold. An objection to the joinder of the cause of action would raise a triable issue, and such objection is no ground to hold that the plaint does not disclose any cause of action warranting rejection of the plaint under Order VII Rule 11(a) of the CPC. The plaintiff would be entitled to lead evidence in support of the cause of action and entitlement to seek the relief as prayed in the plaint.

10. So far as the ground of limitation is concerned, the

plaintiff has pleaded that defendant no. 1 has not complied with the terms and conditions of the agreement dated 2nd February 2008, despite various reminders. According to the plaintiff, there are various obligations to be complied with by defendant no. 1 under the terms and conditions of the said agreement, which is executed under the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963. The plaintiff has accordingly pleaded that the entire consideration amount of Rs. 5,51,00,000/- is already paid; however, though agreed to handover possession on or before 31st March 2008, the obligations under the agreement are not complied with by defendant no. 1. Hence, since March 2008, defendant no. 1 was called upon to comply with the obligations; however, defendant no. 1 had requested time for resolving technical problems regarding permissions from corporation. Particulars regarding the meetings held and the notices dated 5th March 2015 and 10th April 2015 are pleaded. It is further pleaded that it was only in August 2015 that defendant no. 1 refused to comply with the obligations. Hence, the suit was filed in September 2015. The failure on the part of defendant no. 1 is pleaded as the cause of action for filing the suit.

11. Thus, the legal principles settled by the Hon'ble Apex Court in *Samruddhi Co-operative Housing Society* squarely apply to the present case. It is held that non-compliance with the obligations under Sections 3 and 6 of MOFA would amount to continuing breach, and thus, for computing the period of limitation, a fresh period of limitation begins to run at every moment of time during which the breach continues. Hence, the plaintiff is entitled to lead evidence to prove that the suit is within the limitation.

12. I have perused the orders passed by this court in the interim applications. The statement on behalf of defendant no.1, recorded in order dated 10th February 2020, is for handing over possession of Unit Nos. 503 and 504. The said statement is unconditional. The subsequent statements regarding the dispute on the parking space were recorded without prejudice to the rights and contentions of defendant no.1. Based on the subsequent events of handing over possession of two units, the plaintiff has amended the suit and prayed for reliefs regarding the parking space and for further reliefs for common amenities, occupancy certificate and damages. Thus, the unamended plaint as well as the

amended plaint provide for a cause of action for seeking the reliefs prayed in the suit. The plaintiff would therefore be entitled to lead evidence to support the contentions in the plaint. The suit raises triable issues and thus cannot be rejected at the threshold.

13. The legal principles regarding the rejection of a plaint under Order VII Rule 11 of the CPC are no longer res integra. The Hon'ble Apex Court in the decision of *Dahiben v. Arvinbhai Kalyanji Bhanusal²*, held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

14. Learned counsel for the plaintiff is right in pointing out that filing an application under Order VII Rule 11 of the CPC at this stage is only with an intention to protract the hearing of the suit. The object of the Commercial Courts Act is the speedy disposal of the suit. In view of Order XV-A of the CPC, which provides for a case management hearing for the conclusion of the trial within six months after the dates are fixed for concluding the trial. The suit is at the stage of the decision on the plaintiff's application for summary judgment

² (2020) 7 SCC 366

under Order XIII-A of the CPC. Defendant No. 1's attempt to file such an application is obvious for the purpose of delaying the hearing of the suit. Hence, defendant no.1 would be liable to pay costs to the plaintiff for delaying further stages of the trial.

15. The Interim Application is rejected.

16. Defendant No. 1 shall pay the cost of Rs. 50,000/- to the plaintiff. Cost shall be paid within six weeks from today.

(GAURI GODSE, J.)