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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 05.05.2026***
Date of decision: 24.07.2026

\+ FAO(OS) 56/2026 & CM APPL. 30082/2026

ASHOK KAURA & ORS. .....Appellants

Through: Mr. Anupam Srivastava, Senior Advocate with Mr. Archit Singh, Mr. Vasuh Misra, Mr. Devesh Bhatia and Ms. Shreya Kunwar, Advocates.

versus

S. SHALU CONSTRUCTIONS .....Respondent

Through: Mr. Jai Sahai Endlaw and Ms. Sagarika Kaul, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal has been filed by the Appellants under Section 10 of the Delhi High Court Act, 1966 assailing the Judgment dated 11.03.2026 passed by the learned Single Judge in I.A.8516/2024 of CS (OS) 813/2023 titled as ***M/s Shalu Constructions V. Ashok Kaura and Ors.,*** whereby, application preferred by the Appellants under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") was dismissed.

2. The controversy in the present appeal is confined to two preliminary issues raised by the Appellants. The first is whether, as per plaint, the suit is *ex facie* barred by limitation so as to warrant rejection of the plaint under Order VII Rule 11 of CPC. The second issue pertains to the maintainability of

the suit on the ground that the Respondent had not complied with the mandatory requirement of pre-institution mediation contemplated under Section 12A of the Commercial Courts Act, 2015.

3. Briefly stated, the Respondent is a company engaged in the business of redevelopment of immovable properties in Delhi, while the Appellants are the joint owners of property bearing No. A-72, New Friends Colony, New Delhi, admeasuring 492 square yards ("*Suit Property*").

4. As per the plaint, in January, 2013, the Appellants approached the Respondent expressing their willingness to redevelop the Suit Property. It is pleaded that Appellants claimed themselves as the joint owners of the Suit Property, while simultaneously disclosing that two litigations concerning the Suit Property were pending before this Court, namely: (i) CS (OS) No. 649 of 2010, a suit for partition and (ii) CS (OS) No. 1448 of 2010, a suit for specific performance. The Appellants stated to have required financial assistance to amicably settle the pending disputes and execute a favourable collaboration arrangement with the Respondent in terms of the preliminary decree dated 09.07.2010 in partition suit CS (OS) No. 649 of 2010.

5. Acting upon the aforesaid representation, the parties executed the Collaboration Agreement dated 01.02.2013. Under the said Agreement, the Respondent agreed to undertake demolition of the existing structure and redevelop the Suit Property by constructing a building comprising a basement, stilt, ground floor, first floor, second floor, third floor and terrace(s). The total monetary consideration payable to the Appellants was agreed at Rs. 7.50 crores, apart from the allocation of specified portions of the redeveloped suit property between the parties in accordance with the terms of the Agreement.

6. Simultaneously with the execution of the Collaboration Agreement, the Respondent claims to have paid a sum of Rs.2 crores in cash to Appellant Nos. 2 and 3, acknowledged *vide* Receipts dated 01.02.2013 and also forms part of the Collaboration Agreement. The plaint further avers that additional payments of Rs. 20,00,000/- on 16.03.2013 and Rs.12,00,000/- on 01.11.2013 were subsequently made to facilitate settlement of the pending litigations concerning the suit property.

7. It is averred that the suit for specific performance instituted by Mr. Ajit Pal Singh bearing CS (OS) No. 1448/2010, came to be withdrawn on 11.07.2013. Thereafter, in furtherance of the Collaboration Agreement, the Respondent applied for sanction of building plans before the South Delhi Municipal Corporation, deposited requisite municipal charges and obtained sanction of the building plans in October 2013.

8. According to the Respondent, notwithstanding to the aforesaid steps being taken on its part, the Appellants failed to perform the obligations casted upon them under the said Agreement. The plaint specifically pleads that the Appellants were required to secure conclusion of pending partition proceedings, obtain mutation of the suit property in their favour, procure conversion of the property from leasehold to freehold and thereafter hand over the vacant possession of the suit property to enable redevelopment as mentioned in para 11 of the plaint.

9. The plaint further avers that the partition proceedings continued for several years owing to issues relating to the valuation of the suit property and preparation of the decree sheet and eventually culminated only on 14.07.2022, when directions were issued for preparation of the final decree. According to the Respondent, despite repeated assurances by the Appellants,

that possession would be handed over immediately upon completion of the aforesaid procedure, they failed to perform their contractual obligation.

10. It is further pleaded that the Respondent subsequently learnt that the Appellants were attempting to alienate the Suit Property to third parties for higher consideration in breach of the Collaboration Agreement. Consequently, the Respondent issued a public notice dated 04.11.2023 in Hindustan Times, asserting its contractual rights with respect to the Suit Property and thereafter served a legal notice dated 08.11.2023 calling upon the Appellants to perform their obligations under the Collaboration Agreement by handing over possession of the Suit Property within fifteen days. However, despite service of the legal notice, the Appellants failed to hand over the physical possession of the Suit Property to the Respondent. Aggrieved, the Respondent instituted CS(OS) No. 813/2023 seeking, *inter alia*, specific performance of the Collaboration Agreement dated 01.02.2013, permanent injunction restraining alienation of the Suit Property and, in the alternative, recovery of Rs. 2,44,38,350/- altogether with interest.

11. During the pendency of the suit, the Appellants filed an application under Order VII Rule 11 of CPC, contending that the suit was barred by limitation under Article 54 of the Limitation Act, 1963 and that the institution of suit without resorting to the mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, 2015, renders the suit non-maintainable.

12. The said application was dismissed *vide* Order dated 11.03.2026, Aggrieved thereby, the Appellants preferred the present appeal.

13. The impugned order is assailed by the learned counsel for the Appellants submitting that the learned Single Judge erred in holding that the

suit could not be rejected at the threshold on the ground of limitation. According to the Appellants, the bar of limitation is evident from the averments contained in the plaint itself. It was pointed out that the Collaboration Agreement was admittedly executed on 01.02.2013; substantial payments are stated to have been made during the course of 2013; the sanction plans were obtained in October 2013; and one of the receipts relied upon by the Respondent specifically records that possession of the Suit Property was to be handed over on or before 05.02.2014. In these circumstances, it was contended that, even if every averment in the plaint is accepted as correct, the latest point from which limitation could begin to run was 05.02.2014. Consequently, the suit instituted in December 2023 is, on the face of the plaint, barred by limitation under Article 54 of the Limitation Act.

14. It was further argued that the Respondent has sought to circumvent the law of limitation by placing reliance on subsequent events, namely, the pendency of the partition proceedings and the preparation of the decree sheet therein. According to the Appellants, neither of these developments have any nexus with the commencement of limitation under the Collaboration Agreement. It was submitted that the starting point of limitation cannot be shifted merely because one party continued to hope or expect that the other would ultimately honour its contractual obligations.

15. On the question of maintainability, learned counsel submitted that the dispute is plainly a "commercial dispute" within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015, since the Collaboration Agreement relates to redevelopment of the property for valuable consideration. It was, therefore, contended that compliance with the mandatory requirement of pre-institution mediation under Section 12A of the

said Act was a condition precedent to the institution of the suit. As the Respondent admittedly instituted the suit without first resorting to pre-institution mediation, the suit itself was not maintainable.

16. Per contra, learned counsel appearing on behalf of the Respondent supports the impugned order and contend that the same does not warrant any interference by this Court.

17. We have heard learned counsel for the parties and perused the material placed on record.

18. The questions that arise for consideration before this Court are as follows:

a. Whether, on a meaningful reading of the plaint and the documents accompanying it, the suit is *ex facie* barred by limitation so as to warrant rejection of the plaint under Order VII Rule 11(d) of the CPC?

b. Whether the suit is liable to be rejected for alleged non-compliance with Section 12A of the Commercial Courts Act, 2015?

19. The principal submission advanced on behalf of the Appellants is that the suit, having been instituted in December 2023, is clearly barred by limitation. According to the Appellants, the Collaboration Agreement was executed on 01.02.2013 and one of the receipt dated 01.11.2013 relied upon by the Respondent itself stipulates that possession of the Suit Property was to be handed over on or before 05.02.2014. It is, therefore, contended that the period of limitation commenced, at the latest, from the said date.

20. A suit for specific performance is governed by Article 54 of the Limitation Act, 1963, which prescribes a period of three years. The limitation begins to run either from the date fixed for performance or, where no such date has been fixed, from the date on which the plaintiff has notice that performance has been refused.

21. In ***Ahmadsahab Abdul Mulla (2) v. Bibijan & Ors., (2009) 5 SCC 462***, the Supreme Court explained that the expression *"date fixed for the performance"* occurring in Article 54 of the Limitation Act contemplates a definite and ascertainable date agreed upon between the parties for performance of the contract. Where the contract does not specify such a fixed date, the second part of Article 54 comes into operation, and the period of limitation begins only when the plaintiff has notice that the defendant has refused to perform the contract. It has been held as under:

> *"11. The inevitable conclusion is that the expression "date fixed for the performance" is a crystallised notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances."*

22. The plaint in the present case does not merely plead the execution of the Collaboration Agreement. It also avers that, under the terms of the agreement, the Appellants were first required to fulfil certain obligations before the Respondent could proceed with the redevelopment of the Suit Property. The relevant para of the plaint as mentioned below-

"11. It is pertinent to note that under the Collaboration Agreement, the Defendants were required to settle their litigations, obtain mutation of the Suit Property in their names and also have the Property converted from leasehold to freehold. The Defendants informed the Plaintiff that they would fulfill the aforesaid requirements and handover possession as soon as the decree sheet is prepared and the settlement deed is registered, which however was taking time as the court had sought valuation of the Suit Property. ***.*** *The Registry of this Hon'ble Court had issued dated 03.09.2016 seeking valuation report of the Suit Property in order to ascertain the quantum of stamp duty. Vide order dated 28.09.2018, court notice was also issued to the Principal Secretary (Revenue) and the concerned SDM to furnish the valuation reports of the Suit Property. However, the same was not filed and the proceedings remained pending on account of valuation as reflected in orders dated 18.12.2018, 15.01.2019, 14.03.2019, 20.03.2019, 22.05.2019 and 01.10.2019. The Defendant No. 1 in the meantime also filed an application being IA No. 4076 of 2019 under Order6A(1) of CPC read with Section 2(15) of the Indian Stamp Act and Section 151 of the Code of Civil Procedure, 1908.However, the said application was not taken up at the request of the Defendant No. 1 as noted in the order dated 01.10.2019.Thereafter, due to the onset of the pandemic Covid-19, the Government of India had imposed a lockdown in the country on 24.03.2020 and the same remained in operation until30.06.2020. The suit was taken up only on 20.04.2022 and finally on 14.07.2022."*

23. As per the plaint, the Respondent does not treat delivery of possession as an independent obligation. Rather, the plaint avers that possession was to be handed over only after completion of the partition proceedings, mutation of the Suit Property, and its conversion from leasehold to freehold as mentioned above. Whether these obligations were intended by the parties to operate as conditions precedent to redevelopment is not an issue that can be answered at this stage. It necessarily requires a proper construction of the Collaboration Agreement in the light of the surrounding facts and, the evidence that may be adduced by the parties.

24. The legal position is fortified by the decision of the Supreme Court in ***Panchanan Dhara & Ors. v. Monmatha Nath Maity & Anr., (2006) 5 SCC 340***, while considering when limitation under Article 54 of the Limitation Act begins to run where performance of the contract depends upon fulfilment of certain preconditions or reciprocal obligations, the Supreme Court held:

> *"22. A bare perusal of Article 54 of the Limitation Act would show that the period of limitation begins to run from the date on which the contract was to be specifically performed. In terms of Article 54 of the Limitation Act, the period prescribed therein shall begin from the date fixed for the performance of the contract. The contract is to be performed by both the parties to the agreement. In this case, the first respondent was to offer the balance amount to the Company, which would be subject to its showing that it had a perfect title over the property. We have noticed hereinbefore that the courts below arrived at a finding of fact that the period of performance of the agreement has been extended. Extension of (sic time for performance of a) contract is not necessarily to be inferred from written document. It could be implied also. The conduct of the parties in this behalf is relevant. Once a finding of fact has been arrived at, that the time for performance of the said contract had been extended by the parties, the time to file a suit shall be deemed to start running only when the plaintiff had notice that performance had been refused. Performance of the said contract was refused by the Company only on 21-8-1985. The suit was filed soon thereafter. The submission of Mr Mishra that the time fixed for completion of the transaction was determinable with reference to the event of perfection of title of the second respondent cannot be accepted. The said plea had never been raised before the courts below. Had such a plea been raised, an appropriate issue could have been framed. The parties could have adduced evidence thereupon. Such a plea for the first time before this Court cannot be allowed to be raised. Even otherwise on a bare perusal of the agreement for sale dated 18-4-1971, it does not appear that it was intended by the parties that the limitation would begin to run from the date of perfection of title.*
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> *27. Performance of a contract may be dependent upon several factors including grant of permission by the statutory authority in appropriate cases. If a certain statutory formality is required to be complied with or permission is required to be obtained, a*

deed of sale cannot be registered till the said requirements are complied with. In a given situation, the vendor may not be permitted to take advantage of his own wrong in not taking steps for complying with the statutory provisions and then to raise a plea of limitation."

(emphasis supplied)

25. At this stage, this Court is unable to accept the submission of the Appellants that the limitation for filing the suit commenced in the year 2013. As the plaint claims that the Appellants had themselves stated that they would hand over the possession of the Suit Property only after settlement of the pending litigations, obtaining mutation of the Suit Property in their favour and conversion thereof from leasehold to freehold. The plaint further specifically avers that the proceedings attained finality only in the year 2022, whereafter the Appellants became obliged to perform their part of the contract. On the basis of the averments in the plaint, as is mandatory while considering an application under Order VII Rule 11 CPC, the cause of action to seek specific performance cannot be said to have arisen prior to 2022 as the pending partition proceedings became final in 2022 only. While considering an application under Order VII Rule 11 of the CPC, the Court is required to proceed on the assumption that the averments made in the plaint are correct. On such an assumption, it cannot be said that the Respondent's right to seek specific performance had arisen before the partition proceedings attained finality in the year 2022. The plaint further states, that, thereafter, the Respondent issued a legal notice dated 08.11.2023 calling upon the Appellants to discharge their obligations under the Collaboration Agreement by handing over possession of the Suit Property within fifteen days, but the Appellants failed to perform their obligations. In view of these averments, it cannot be said, on a meaningful reading of the plaint, that at this stage, the suit

instituted in the year 2023 is *ex facie* barred by limitation under Article 54 of the Limitation Act, 1963.

26. Whether these obligations were, in fact, conditions precedent to the Respondent's performance is plainly a matter that can be determined only after a full-fledged trial. Equally, whether the Respondent was justified in awaiting fulfilment of those obligations before seeking enforcement of the agreement cannot be decided solely on the basis of the plaint while considering an application under Order VII Rule 11 of the Code. At this stage, any conclusive interpretation of the Collaboration Agreement and surrounding circumstances would be premature. The true import of its terms and the sequence in which the parties were required to perform their respective obligations, are matters that fall for determination by the learned Trial Court after issues have been framed and the parties have led evidence.

27. The scope of enquiry under Order VII Rule 11 of the CPC is well settled. At this stage, the Court is required to examine only the averments contained in the plaint and the documents filed along with the plaint. It is a settled principle of law that the plaint must be read as a whole and in a meaningful manner to ascertain whether the suit is barred by law. Also, while considering an application under Order VII Rule 11 of CPC, the Court must proceed on the assumption that the averments contained in the plaint are correct, without embarking upon an enquiry into their truthfulness or otherwise. In ***Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510***, where the Supreme Court held as under:

> *"10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of*

> *Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force."*

28. In ***Urvashiben & Anr. v. Krishnakant Manuprasad Trivedi, (2019) 13 SCC 372***, the Supreme Court held:

> "***20.*** *By applying the aforesaid principles in the judgments relied on by Shri Dushyant A. 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 Order 7 Rule 11CPC. 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 the 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 Order 7 Rule 11(d)CPC."*

29. In ***Balasaria Construction (P) Ltd. v. Hanuman Seva Trus & Ors., (2006) 5 SCC 658,*** the Supreme Court held that where the question of limitation is a mixed question of law and fact, the plaint cannot be rejected under Order VII Rule 11 CPC. The relevant extract is reproduced as under:

> ***"8.*** *After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure."*

30. The principles that emerge from the aforesaid decisions make it clear that the expression "*mixed question of law and fact*" is not to be employed as a matter of routine. Before declining to examine a plea of limitation at the threshold, the Court must first determine whether the plaint, on its own showing, unequivocally discloses that the suit is barred by limitation. If it does, the plaint may be rejected under Order VII Rule 11(d) of the Code. However, where the issue of limitation turns on disputed questions concerning the conduct of the parties, the nature and sequence of their reciprocal obligations, waiver, extension of time, readiness and willingness to perform, or the point at which the plaintiff first had notice of refusal, the matter necessarily requires adjudication on evidence. In such a situation, rejection of the plaint at the threshold would be wholly unwarranted.

31. Applying the aforesaid principles to the facts of the present case, we are unable to accept the contention that the plaint admits of only one conclusion, namely, that the suit is barred by limitation.

32. Another aspect that remains for consideration is with respect to the non-compliance with Section 12A of the Commercial Courts Act, 2015. The Appellants contend that the present dispute arises out of a Collaboration Agreement involving redevelopment of property for consideration and, therefore, falls within the ambit of a "Commercial dispute" under Section 2(1)(c) of the Commercial Courts Act, 2015, which is disputed by the Respondent.

33. The Division Bench of this Court in ***Asif Ali Khan v. Manoj Kumar, 2024 SCC OnLine Del 2083***, held as under:

> ***"11.*** *The learned counsel appearing for the appellant submits that the disputes involved in the present petition would also be covered as a*

commercial dispute under Clause (vi) of Section 2(1)(c) of the CC Act. The said clause reads as under:

"(vi) construction and infrastructure contracts, including tenders;"

12. *The Agreement to Sell is in the nature of a contract for sale and purchase of immovable property; it is not a construction contract as contemplated under Clause 2(1)(vi) of the CC Act. Merely, because the payment of instalments of the purchase consideration is linked to the stage of construction, does not change the nature of the Agreement to Sell to a construction contract. A plain reading of the Agreement to Sell indicates that it is an agreement for purchase of a flat. In terms of the Agreement to Sell, the respondent had agreed to deliver the possession of the said flat on or before December, 2017 in a semi furnished stage - with fan, light, geyser, exhaust fan, Kent RO, chimney, modular kitchen, one wardrobe extra. Notwithstanding the clear terms of the Agreement to Sell, the learned counsel submits that since the Collaboration Agreement was for redevelopment of the subject property, the Agreement to Sell is required to be considered in the same light. The said contention is insubstantial. It is the appellant's case that the respondent was entitled to sell a portion of the property, which was agreed to be redeveloped in terms of the Collaboration Agreement.*

13. *The learned counsel appearing for the appellant, at this stage, seeks to advance the contention, which is in variation with the pleadings in the plaint. He submits that since the first floor of the property fell into the share of the owners, the Agreement to Sell must be considered as a construction contract. He submits that as the Collaboration Agreement was for development of the subject property and the respondent was merely acting as an agent of the owners. This contention is also insubstantial apart from being in variation with the pleadings. Whether the said flat would fall to the share of the developer (the respondent) or the owner of the subject property makes little difference to the nature of the dispute involved. As noted above, the Agreement to Sell is a contract for sale and purchase of a residential flat; not a construction contract."*

34. The aforesaid ratio laid down by the Division Bench of this Court in **Asif Ali Khan** *(supra)* squarely applies to the present case.The Collaboration Agreement in the present case bears the same essential features. The Respondent was not engaged merely to undertake construction for monetary consideration. Under the terms of the agreement, it was to receive specified portions of the building, together with a proportionate undivided interest in the land appurtenant thereto. The rights so created are proprietary in character and extend beyond those ordinarily arising under a pure construction contract. The transaction, therefore, cannot be brought within the ambit of a construction contract contemplated under Section 2(1)(c)(vi) of the Commercial Courts Act. Once it is found that the dispute does not fall within the scope of a "commercial dispute" as defined under Section 2(1)(c) of the Commercial Courts Act, 2015, the mandate of pre-institution mediation under Section 12A of the Act has no application.

35. We are, therefore, of the considered opinion that the learned Single Judge committed no error in declining to reject the plaint under Order VII Rule 11 CPC. The impugned order does not warrant interference in appeal.

36. The appeal is accordingly dismissed, along with all pending applications, if any.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

JULY 24, 2026/*kp/ss*