



2025:AHC-LKO:84195

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CIVIL REVISION No. - 18 of 2022

Devendra Srivastava And Ors.

.....Revisionist(s)

Versus

M/S Eifel Recreation Club (P) Ltd.

.....Opposite
Party(s)

Counsel for Revisionist(s) : Pritish Kumar, Amal Rastogi, Surya
Prakash

Counsel for Opposite Party(s) : Gaurav Mehrotra, Brijesh Kumar, Ishita
Yadu, Rakshit Raj Singh, Utkarsh
Srivastava

Reserved : 09.12.2025

Delivered : 16.12.2025

Court No. - 6

HON'BLE JASPREET SINGH, J.

1. The revisionists are the defendants of Regular Suit No.2066 of 2021, filed before the Civil Judge (Senior Division), Lucknow (M/s Eifel Recreation Club (P) Ltd. Vs. Devendra Srivastava & others) by the respondent herein, who is the plaintiff, seeking a decree of specific performance of contract and perpetual injunction.
2. The revisionists filed an application under Order VII Rule 11 CPC before the trial court seeking rejection of the plaint in suit on the ground that it was barred by the law of limitation. The trial court after hearing the parties by means of impugned order dated 06.05.2022 rejected the said application, which led the defendants to assail the said order in a revision under Section 115 CPC before this Court.
3. Shri Pritish Kumar, learned Senior Counsel for the revisionists alongwith Shri Amal Rastogi, learned counsel has urged that the suit filed by the respondents was patently barred by law of limitation.

4. Elaborating his submission, learned Senior Counsel urged that an agreement was entered between the plaintiff and the defendants dated 12.12.2012 in terms whereof the revisionists had agreed to sell the property in question to the respondent. The parties had agreed on a total sale consideration of Rs.2,65,00,000.00, out of which 2,40,00,000.00 had been received by the revisionists and a sum of Rs.25,00,000.00 was to be paid by the respondent at the time of execution of the sale deed. The parties had specifically agreed that the remaining sale consideration would be paid within one year from the date of the agreement.

5. It is further urged that the remaining sale consideration as agreed was not paid by the respondent despite the passage of several years. As a consequence, the agreement had lost its efficacy.

6. Learned Senior Counsel further urged that the respondent by creating an artificial cause of action instituted a suit for specific performance of contract and perpetual injunction on 30.11.2021 which was patently time barred. It was urged that for seeking relief of specific performance the suit is required to be filed within a period of three years as provided in Article 54 appended to the Limitation Act 1963.

7. The learned Senior Counsel further submitted that the period of limitation of three years commences from the date fixed for performance of the contract. In the instant case, the agreement was entered between the parties on 12.12.2012 and it clearly provided that the sale deed would be executed within a period of one year which expired in the month of December, 2013, hence, this date would be the starting point for commencement of limitation and the three years period as per Article 54 of the Limitation Act would come to an end in December 2016. However, the suit was filed in the year 2021 i.e. after five years from the date when the limitation expired.

8. Learned Senior Counsel further urged that it was a completely dead case which was sought to be given artificial respiration and this sort of mechanism is not permitted in law. The plaintiff cannot be permitted to create an illusion of a cause of action which already had become stale in the years 2016. In the given circumstances, the plaint in suit was patently

barred by limitation and there can be no two views about it, as Article 54 squarely applied, since the date was mentioned in the agreement by which the parties were required to get the sale deed executed.

9. Learned Senior Counsel for the revisionists has drawn the attention of the Court to the copy of the plaint in suit which has been brought on record as annexure no.1 with the paper book indicating that the terms of the agreement entered between the parties on 12.12.2012 were admitted. It is urged that once this fact regarding the period of limitation as mentioned in the registered agreement was admitted then it was not open for the plaintiff/respondent to plead any extension the period of limitation on the basis of some loose plead any extension of averments made in the plaint, only to cover up the period of limitation. Such measures are frowned upon in law and it is duty of the Court to examine that such stale claims do not engage the attention of the Court as it results in colossal waste of time and resources.

10. Learned Senior Counsel further urged that ordinarily the issue of limitation is generally a mixed question of law and fact which is usually decided after the parties lead evidence. However, in cases where from the bare perusal of the plaint and the documents filed in support by the plaintiff, if it can be established that the plaint is barred by limitation, then in such circumstances the Court is enjoined to invoke the powers of Order VII Rule 11 CPC and reject such a vexatious plaint.

11. In the instant case, since the plaintiff attempted to cover the period of limitation by referring to certain exchange of correspondence which *per se* was not relatable to agreement to sell and taking the benefit of the COVID-19 Pandemic, the respondent cannot be permitted to engage the Court or the revisionists into a fruitless litigation, accordingly the plaint was liable to be rejected.

12. Learned Senior Counsel for the revisionists has also pointed out that the trial court committed a jurisdictional error in holding that the issue of limitation was a mixed question of law and fact and as to whether the plaint was barred or not could only be ascertained after the parties lead evidence and by rejecting the application under Order VII Rule 11 CPC,

the trial court committed a grave error.

13. It was also urged that in the instant case, where the date of performance had clearly been fixed by the parties i.e. one year from 12.12.2012, which came to an end in December 2013, hence the clock of limitation started and since the suit was not filed within the period of three years which too expired in the year 2016 and the plaint was instituted five years thereafter hence, by any stretch of imagination the plaint could not be treated to have been filed within time. Thus, the plaint was liable to be rejected.

14. Learned Senior Counsel for the revisionist in support of his submission has relied upon the following decisions **Raghwendra Saran Singh v. Ram Prasanna Singh (Dead) by Lrs, 2019 (2) AJR 449, Dahiben v. Arvindbhai Kalyanji Bhanusali and others AIR 2020 S.C. 3310, Shri Mukund Bhavan Trust and others v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle, AIR 2024 SC (Civil) 392, Usha Devi and others v. Ram Kumar Singh and others, AIR 2024 SC 4591 and Popat and Kotecha Property v. State Bank of India Staff Association (2005) 7 SCC 510.**

15. Shri Gaurav Mehrotra, learned Senior Counsel alongwith Shri Utkarsh Srivastava, learned counsel for the respondent has vehemently controverted the submissions advanced on behalf of the revisionists.

16. It was urged that the question of limitation being a mixed question of law and fact can only be decided after the parties lead evidence. No doubt in cases where it can clearly be ascertained that a suit is barred by limitation, the Court may invoke the power under Order VII Rule 11 CPC to reject such a plaint. However, it must be first ascertained whether the averments made in the plaint do suggest that the plaint was, *prima facie*, barred by the law of limitation. In order to ascertain the aforesaid question, it would be relevant to read the entire plaint in a meaningful manner. While doing so, the plaint has to be taken at its face value without making any addition or subtraction to the averments. Sentences cannot be culled out in isolation nor while considering the plaint any compartmentalization is permitted, in law.

17. It is in the aforesaid circumstances where the plaint is read as a whole and also taking note of the documents filed by the plaintiff, yet the Court comes to the conclusion that merely going through the plaint and documents filed by the plaintiff in support thereof, the plaint appears to be barred by limitation, then surely the Court would be justified in invoking the powers under Order VII Rule 11 CPC.

18. Learned Senior Counsel for the respondent further urged that it is not open for the Court to make a comment on the averments of the plaint as to whether they are true or false. The averments have to be taken as indicated in the plaint itself and any attempt to scrutinize the plaint with the spectacle, the defendants is not permitted in law. No part of the defence of the defendants can be seen while examining the plaint for the purposes of Order VII Rule 11 CPC.

19. It is in the aforesaid backdrop, if the plaint is read as a whole, it would clearly indicate that though the agreement dated 12.12.2012 was admitted to the parties but what transpired thereafter was pleaded specifically in the plaint, which led to extending the period of limitation and it had to be seen in the manner as mentioned in the plaint. Whether the aforesaid facts are true or false or whether they convey some different meaning and how the issue of limitation would operate, these are all issues which can only be considered and decided by the Court after the parties are granted an opportunity to lead evidence.

20. It has further been urged that from the bare perusal of the averments made in the plaint including the documents filed in support of the plaint averments, there was ample material before the trial court which indicated that after the execution of the agreement to sell dated 12.12.2012, there were change in circumstances in pursuance whereof, the plaintiff had paid a further sum of Rs.24,00,000.00, out of remaining Rs.25,00,000.00 and the parties also entered in an another supplementary agreement and in terms thereof, the parties agreed that the sale deed could now be got executed as and when the plaintiff would require.

21. Learned Senior Counsel further urged that the time limit of one year as mentioned in the agreement dated 12.12.2012 was diluted and this was

specifically pleaded in the plaint. It was also specifically mentioned that since the date of execution of the agreement, the revisionists never disputed the agreement as well as the supplementary agreement and never refused to comply with the obligation of executing the sale deed, hence the case was covered by the later part of Article 54 of the Limitation Act and that would mean that the period of limitation would commence from the date, when the defendants refused to comply with the obligation to execute the sale deed.

22. It was specifically pleaded that the defendant continued to assure the plaintiff that they would execute the sale deed as and when required by the plaintiff and they had sought time only to clear an encumbrance on the property. As per the agreement dated 12.12.2012, it was an obligation of the defendant to clear the encumbrance on the property and it is for the aforesaid reason that the defendant had sought time. The plaintiff was always ready and willing to perform their part of contract and apart from having paid almost the entire consideration except of rupees one lakh, which was also sent to the defendants through cheques but, the same were returned.

23. The defendants through their counsel vide notice dated 17.09.2021, for the first time refused to execute the sale deed and also informed the plaintiff that it had forfeited the consideration already paid. It is from this point onwards, when the defendants refused to comply with the obligations in the agreement and took a contrary stand, triggered the period of limitation for the purposes of the latter part of Article 54 of the Limitation Act and as the suit was filed on 30.11.2021, hence the same was absolutely within limitation

24. The fact whether the supplementary agreement would have any impact on the limitation, the issue whether the supplementary agreement was authentic or it could have any impact of modifying the principal agreement dated 12.12.2012 is all a matter of evidence, which can only be decoded at trial.

25. In the aforesaid circumstances, in light of the averments made in the plaint and the documents filed by the plaintiff including the notices and

correspondence exchanged between the parties, the conduct of the parties, as to how they understood and acted upon the principal agreement as well as the supplementary agreement would be a subject matter of trial, but nevertheless it cannot be said that the plaintiff attempted to create any illusion of a cause of action or that from the averments made in the plaint, it clearly indicated that the plaint was barred. Thus, where the plaint was appropriately drafted with clarity indicating a clear cause of action which was within the period of limitation.

26. The trial court after considering the material on record found that the issues raised by the defendants could only be tested at trial, hence it rejected the application under Order VII Rule 11 CPC and this exercise of jurisdiction cannot be termed to be perverse. Thus, the impugned order does not suffer from any error. For the aforesaid reasons, the revision deserves to be dismissed.

27. In support of his submissions, learned Senior Counsel for the respondent has relied upon the following decisions **P. Kumarakurubaran v. P. Narayan and others 2025 SCC Online SC 975, Chottanben and another v. Kiritbhai Jalkrushanbhai Thakkar and others, Urvashiben v. Krishnakant Manuprasad Trivedi (2019) 13 SCC 372, Popat and kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510, S. Brahmanand and others v. K.R.Muthugopal and others (2005) 12 SCC 764 and Panchanan Dhara and others v. Monmatha Nath Maity and another, (2006) 5 SCC 340**

28. The Court has heard learned Senior Counsel Shri Pritish Kumar who has been ably assisted by Shri Amal Rastogi for the revisionists and Shri Gaurav Mehrotra, learned Senior Counsel who too has been ably assisted by Shri Utkarsh Srivastava, Advocate for the respondent at length and also perused the material on record.

29. At the outset, it would be appropriate to outline the scope of jurisdiction exercised by a Court while considering an application under Order VII Rule 11 CPC. This issue has been the subject matter of several decisions rendered by this Court as well as the Apex Court. This Court

deems appropriate to notice the observations made by the Apex Court while considering an application under Order VII Rule 11 CPC with the aid of the following decisions. The Apex Court in **Saleem Bhai v. State of Maharashtra (2003) 1 SCC 557**, **Sopan Sukhdeo Sable v. Asstt. Charity Commissioner, (2004) 3 SCC 137**, **T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467**, **Hardesh Ores (P) Ltd. v. Hede and Co., (2007) 5 SCC 614**, **ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70**, **Raghwendra Saran Singh v. Ram Prasanna Singh (Dead) by Lrs, 2019 (2) AJR 449**, **Dahiben v. Arvindbhai Kalyanji Bhanusali and others AIR 2020 S.C. 3310**, **Shri Mukund Bhavan Trust and others v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle, AIR 2024 SC (Civil) 392**, **Usha Devi and others v. Ram Kumar Singh and others, AIR 2024 SC 4591** and **Popat, Kotecha Property v. State Bank of India Staff Association (2005) 7 SCC 510**, **P. Kumarakurubaran v. P. Narayan and others 2025 SCC Online SC 975**, **Chottanben and another v. Kiritbhai Jalkrushanbhai Thakkar and others, Urvashiben v. Krishnakant Manuprasad Trivedi (2019) 13 SCC 372**, **S. Brahmanand and others v. K.R.Muthugopal and others (2005) 12 SCC 764** and **Panchanan Dhara and others v. Monmatha Nath Maity and another, (2006) 5 SCC 340**.

30. Having considered the aforesaid decisions and the principles laid down therein, the following principles can be culled out as under:- (i) while dealing with the application under Order VII Rule 11 CPC, a Court is bound only to consider the averments made in the plaint in suit and the documents filed in support of the plaint; (ii) No part of the defence or documents filed by the defendant can be looked into; (iii) the averments made in the plaint has to be taken as the truth and the Court cannot proceed on the premise that the averments are false; (iv) the Court is required to undertake a meaningful reading of the plaint, in contradistinction to a formal reading; (v) the Court is not required to compartmentalize or read the averments by dissecting, the averments or paragraph of the plaint, it is only upon the meaningful reading if the Court comes to the conclusion that no cause of action is disclosed or the cause of action is apparently vexatious, then the Court can reject the plaint and

nip a frivolous litigation it in the bud; (v) The claim cannot be rejected in piecemeal that is to say that even if one of the reliefs claimed is cognizable and can be granted and some other reliefs may not be granted, cannot be a ground to reject the plaint under Order VII Rule 11 CPC; (vi) the Court can invoke the powers of Order VII Rule 11 CPC at any stage of the proceedings.

31. Keeping the aforesaid principles in mind, it will now be appropriate to examine the averments made in the plaint. The plaintiff while filing the suit for specific performance and perpetual injunction clearly referred to the agreement dated 12.12.2012.

32. It was also disclosed that the defendants had agreed to sell the property in question to the plaintiff for a total consideration of Rs.2,65,00,000/-, out of which Rs.2,40,00,000/- had been paid. The remaining sale consideration of Rs.25,00,000/- was to be paid at the time of execution of the sale deed.

33. It was also agreed that the sale would be executed within a period of one year after paying the balance sale consideration. Up till now and till this stage there is no dispute between the parties relating to the facts as pleaded in the plaint.

34. Thereafter, it has been pleaded that upon the request of the defendants the plaintiff paid a further sum of Rs.24,00,000/- to the defendants by three cheques which was acknowledged by the defendants by executing a supplementary agreement dated 06.09.2013 (see para-6 of the plaint). It was thereafter pleaded that the parties discovered that there was an encumbrance on the property as the defendants had taken a loan from HDFC Bank and therefore a sum of Rs.1,00,000/- which was left as balance consideration would be payable once the said encumbrance was cleared by the defendants who would then inform the plaintiff of the same where after the sale deed would be executed.

35. It has also been pleaded that the plaintiff sent a notice to the defendants on 31.05.2019 sending the balance consideration of Rs.1,00,000/- by means of cheques drawn in favour of the defendants and also requested the defendants to execute the sale deed. However, it is

stated that the defendants refused to accept the same, where after the matter was stalled on account of the COVID-19 Pandemic.

36. It was then pleaded that, on 17.09.2021, the plaintiff received a notice through the counsel for the defendants, wherein for the first time it was alleged that the defendants did not intend to honour the agreement and refused to execute the sale deed. At the same time it stated that the defendant had forfeited the consideration already paid (despite there being no covenant between the parties by which the consideration could have been forfeited). It is then that the plaintiff replied to the notice dated 17.09.2021 and since the plaintiff was apprehensive that the defendants may create third party rights, hence it instituted the suit for specific performance of contract and perpetual injunction in November 2021.

37. In light of the comprehensive averments made in the plaint, it is clear that the plaintiff had indicated a subsisting cause of action. The plaintiff had also pleaded about the supplementary agreement as well as the payment of Rs.24,00,000/- in part performance of the execution of the principal agreement dated 12.12.2012 entered by the parties

38, What is relevant to notice at this stage is that the supplementary agreement executed between the parties, of which there are clear pleadings in the plaint and its copy was filed by the plaintiff alongwith an affidavit in support of the application under Order XXXIX Rule 1 and 2 CPC, moved simultaneously on the date of institution of the suit. Hence, it was available before the trial court on the date when the plaint was instituted wherein it was indicated that the plaintiff had paid a further sum of Rs.24,00,000/- (out of the remaining sale consideration of Rs.25,00,000/-) and that the sale deed would be executed by the defendants in favour of the plaintiff at the asking/request of the plaintiff.

39. At this stage, it is important to notice that since the contesting parties both have relied upon Article 54 as appended to the Limitation Act to determine the period of limitation within which a suit for specific performance of contract can be filed hence, for ready reference Article 54 of the Limitation Act is being reproduced hereinafter:

Description of	Period of	Time from which period begins to
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suit	limitation	run
*	*	*
54. For specific performance of a contract	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

40. From the perusal of the aforesaid Article 54, it would reveal that the period of limitation for filing a suit for specific performance of contract is three years. However, when this time period is to begin, is to be seen in context of the aforesaid Article 54.

41. It would reveal that Article 54 has two parts; (i) when in the agreement, a date is fixed for performance. In such a case, there is not too much of a difficulty, since the date for performance is already fixed and once the said date is breached, the period of limitation commences and the suit in such circumstances have to be filed within three years. However, the (ii) part of Article 54 states that when no such date of performance is fixed, then the limitation commences when the plaintiff acquires the notice that the performance has been refused.

42. This latter part of Article 54 is the issue involved in the instant case as per the plaintiff, whereas the defendants rely upon the first part

43. As already noticed hereinabove that the principal agreement clearly fixed the date of performance, that is a one year from the date of the agreement i.e. 12.12.2012 which would come to an end in December 2013 and henceforth the period of limitation would commence which would be till the year 2016.

44. Significantly, that had the plaint indicated this agreement alone perhaps the submissions of the learned Senior Counsel for the revisionist would have some force. However, as far as the instant case is concerned, the plaintiff has clearly pleaded the fact regarding the original agreement dated 12.12.2012 and thereafter it has referred to supplementary agreement executed between the parties in September 2013 in pursuance whereof the plaintiff also paid a sum of Rs.24,00,000/-, out of the

remaining sum of Rs.25,00,000/- of the balance sale consideration and a change in the terms of the contract so as to extend the date of performance from one year till the time, the plaintiff requested the defendants to execute the sale deed.

45. It has also been pleaded which sufficient particularity that there was an encumbrance on the property for the said reason the defendants kept assuring the plaintiff that the sale deed would be executed after clearing the said encumbrance which was followed by the intervention of COVID-19 Pandemic and that on 17.09.2021 when the defendants issued the notice refusing the performance and that actually latter the cause of action triggered and the suit was filed well as per the latter part of Article 54.

46. This Court finds that whether the supplementary agreement was actually executed between the parties, whether it had the capability of extending the period of limitation that is to say that the parties intended to abide by the original timeline as contained in the agreement dated 12.12.2012 or it was changed vide the supplementary agreement executed in September 2013, what could be the impact of the encumbrance over the property, whether the defendants had assured the execution of the deed at a later date and whether the plaintiff breached his obligations and whether the plaintiffs filed the suit for specific performance after delay are all contentious issues which can only be ascertained after the parties lead evidence.

47. In the given facts and circumstances, this Court after considering the plaint avermentns and the documents filed by the plaintiff is of the clear view that the trial court after appreciating the facts has rightly come to the conclusion that the issue which is sought to be raised as to whether the plaint could be rejected, if coming within the first part of Article 54 or the period of limitation would be in terms of latter part can only be considered and decided at trial. Thus, the order rejecting the application under Order VII Rule 11 CPC does not suffer from any jurisdictional error which may persuade this Court to entertain the revision or uphold the contentions of the learned counsel for the revisionists. 49. It is made clear that any observations made by this Court may not be taken as an expression of opinion on merits as they have been noticed only for the

purposes to examine the issue raised for prima facie satisfaction parties and within the narrow ambit of Order VII Rule 11 CPC. Needless to say that the trial court will decide the matter on merits, on the basis of evidence led by the respective parties before it.

48. It is made clear that any observations made by this Court may not be taken as an expression of opinion on merits as they have been noticed only for the purposes to examine the issue raised for prima facie satisfaction and within the narrow ambit of Order VII Rule 11 CPC. Needless to say that the trial court will decide the matter on merits, on the basis of evidence led by the respective parties before it.

49. For the aforesaid reasons, this Court finds that the order impugned dated 06.05.2022 does not suffer from any jurisdictional error. Accordingly, the revision is **dismissed**. There shall be no order as to costs.

(Jaspreet Singh,J.)

December 16, 2025

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