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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 8th October, 2025*

+ CS(OS) 717/2015

JAGDAMBEY BUILDERS PVT LTD

.....Plaintiff

Through: Mr. Mayank Bansal, Advocate.

versus

JATINDER SINGH VOHRA

.....Defendant

Through: Mr. Dhruv Chawla, Advocate.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This suit is instituted by the Plaintiff seeking decree of specific performance against the Defendant for performance of his part of the obligation under Receipt-cum-Agreement dated 10.08.2006 ('ATS') *inter alia* by executing and getting registered the Sale Deed and all other transfer documents in respect of property bearing No. A-14, First Floor, Neeti Bagh, New Delhi ('suit property') as also for a decree of perpetual injunction restraining the Defendant from transferring/alienating the suit property or creating any third party rights therein.

2. Case set out by the Plaintiff in the plaint is that Defendant represented to the Plaintiff that he was the owner of the suit property comprising of the entire first floor, garage block and half portion of terrace over first floor along with servant quarter and offered to lease the same to the Plaintiff.



Consequently, an unregistered Lease Deed dated 14.09.2005 was executed between the parties for three years commencing from 14.09.2005 at a monthly rate of Rs. 30,000/- besides other charges. During subsistence of the lease, Defendant offered to sell the property to the Plaintiff as he was in possession as a tenant. Plaintiff was informed that the entire property was originally leased by Government of India to his father Late Shri Gyan Singh Vohra, who had in turn executed a registered Will dated 18.10.1993 and bequeathed the suit property to the Defendant.

3. It is stated in the plaint that believing that the Defendant was genuinely interested in selling the suit property, Plaintiff agreed to purchase the same and an ATS was executed between the parties on 10.08.2006 for a total sale consideration of Rs. 2,30,00,000/- and sum of Rs. 15 lakhs was paid by the Plaintiff as earnest money. Defendant was required to execute and register a Sale Deed in favour of the Plaintiff on receiving balance consideration within 8 months of the execution of the ATS. Original Lease Deed was handed over to the Plaintiff since tenancy had ceased and it was agreed that no rent shall be paid since property was purchased by the Plaintiff and earnest money had been paid. Defendant also executed a Possession Letter in favour of the Plaintiff and admittedly, after execution of ATS no rent was paid.

4. It is stated that when Plaintiff received summons of the suit filed by the Defendant before District Judge, Saket Courts for possession, recovery of rent and damages, it was realised that Defendant had concealed the factum of execution of the ATS as also payment of part sale consideration in the said suit and had misrepresented that Plaintiff was a tenant. It is also stated that under the ATS, balance sale consideration was payable by



10.04.2007 and during this period, Plaintiff was always ready and willing to perform his part of the agreement and had on several occasions called upon the Defendant and his attorney Shri K.J.S. Chowdhry to execute the Sale Deed, however, each time Defendant expressed his inability to do so, owing to family disputes. The very fact that Defendant permitted the Plaintiff to continue in possession was indicative of the fact that Defendant had agreed to sell the property under the ATS. Plaintiff was, however, at a receiving end since on one hand part consideration had been paid to the Defendant and on the other hand the residential property owned by the Company, bearing No. D-5, Panchsheel Enclave, New Delhi was sold for a total consideration of Rs. 5,50,00,000/- to pay the balance sale consideration.

5. It is further stated that Plaintiff paid a further sum of Rs. 10,00,000/- to the Defendant on 13.08.2007 followed by payment of Rs. 25,00,000/- on 07.05.2008 out of the remaining sale consideration and these payments were readily accepted by the Defendant against execution of receipts. Receipt of sale consideration after expiry of 8 months period stipulated in the ATS for performance of the agreement implied that time was no longer of essence and date of performance originally agreed between the parties was no longer of any consequence. However, as the prices of the property began to rise, Defendant became dishonest and filed a suit for possession and recovery of rent and damages before the Trial Court on 08.12.2010.

6. It is averred that Plaintiff contested the suit and filed a written statement bringing on record that landlord-tenant relationship no longer existed between the parties in light of execution of the ATS and part payment of sale consideration. Defendant filed a replication and made false averments that ATS was no longer valid since Plaintiff had failed to perform



its part of the obligations thereunder *albeit* admitting the receipt of part sale consideration. Court decreed the suit in favour of the Defendant on 14.10.2014. Appeal filed by the Plaintiff being RFA No. 80/2015 was dismissed by this Court on 02.02.2016 and review application was dismissed on 22.03.2016. SLP(C) Nos. 12726-12727/2016 were dismissed by the Supreme Court on 12.05.2016. Possession of the suit property was taken by the Defendant on 29.04.2016 with the help of Police and Court Bailiff.

7. In the meantime, present suit was filed by the Plaintiff on 17.03.2015 basis the ATS and part payment of sale consideration. As per the plaint cause of action arose in favour of the Plaintiff on 10.08.2006 when ATS and Possession Letter were executed and earnest money of Rs. 15,00,000/- was paid and continued till May, 2014, when Plaintiff learnt of the pending litigation between Defendant and his family members. In between part payments of remaining sale consideration were made on 13.08.2007 and 07.05.2008; Defendant filed the suit for possession on 07.12.2010; Plaintiff filed the written statement on 31.10.2011 bringing on record the ATS and replication was filed by the Defendant on 17.05.2012.

8. Summons were issued in the present suit on 23.03.2015, returnable on 13.04.2015. Defendant filed the written statement on 28.04.2015 and Plaintiff filed the replication on 19.09.2015. Application filed by the Plaintiff under Order 39 Rules 1 and 2 CPC being I.A. No. 5533/2015 was dismissed on 14.01.2016 and by the same order issues were settled as follows:-

“(i) Whether the present suit is barred by limitation? OPD

(ii) Whether the plaintiff was ready & willing to perform the agreement between the parties? OPP

(iii) Whether the plaintiff is entitled to the relief of specific performance in



relation to the agreement dated 10.08.2006 entered into between the parties? OPP”

9. Plaintiff challenged the order dated 14.01.2016 in FAO(OS) No. 49/2016. Appeal was disposed of by the Division Bench declining to grant stay observing that the after dismissal of the appeal filed by the Plaintiff against the decree of eviction being RFA No. 80/2015, eviction order was operating against the Plaintiff and insofar as restraint against the Defendant from creating third party rights in the suit property was concerned, it was observed that in TEST.CAS. No. 10/1996, Court had already passed an order on 29.02.1996, restraining the alienation of the suit property and by a subsequent order dated 06.08.2009, it was directed that interim order shall continue to bind the parties which included the Defendant, who was a party therein and thus bound by the order with respect to the first floor of the property. While disposing of the appeal, Court gave liberty to the Plaintiff to seek interim measures in the suit in case the interim order in the testamentary case was vacated for any reason.

10. Plaintiff filed an application under Order 14 Rule 5 CPC being I.A. No. 3483/2016 for framing additional issue on the ground that during the hearing of the appeal, Plaintiff had learnt of the pendency of the testamentary case between the Defendant and legal heirs. Court framed an additional issue *‘If the Plaintiff is not entitled to relief of specific performance, then what relief the Plaintiff is entitled to? OPP’*. Plaintiff examined three witnesses, PW-1 to PW-3, while Defendant examined one witness DW-1 and evidence was closed on 04.12.2018.

11. Learned counsel for the Defendant contended that the present suit is barred by limitation and thus issue No. (i) *‘Whether the suit is barred by*



limitation’ be decided in favour of the Defendant and against the Plaintiff. Admittedly, the ATS (Ex. PW-1/2) was executed between the parties on 10.08.2006 for total sale consideration of Rs. 2,30,00,000/- and Rs. 15,00,000/- was paid as earnest money on the same day by the Plaintiff. Balance amount was to be paid within 8 months, however, Plaintiff paid Rs. 10,00,000/- on 13.08.2007 and Rs. 25,00,000/- on 07.05.2008 i.e., after the expiry of 8 months and thereafter never paid the remaining balance, as it did not have the financial capacity to pay. As per Article 54, suit for specific performance was to be filed within 3 years from the date of execution of ATS on 10.08.2006. The payments of 10 lakhs and 20 lakhs were beyond the period of limitation but even if these are taken into consideration, 3 years will commence from receipt of last payment made on 07.05.2008 and thus the suit filed on 17.03.2015, is time barred and deserves to be dismissed.

12. Without prejudice, even if the limitation period is computed on basis of second part of Article 54, limitation period will commence from the date notice of performance is refused. Plaintiff was put to notice of refusal by the Defendant, the moment he received summons of the suit for possession, recovery of arrears of rent and damages filed by the Defendant before Saket Courts, being Suit No. 173/2014 or at least from 31.10.2011, when the written statement was filed contesting the right of the Defendant to seek possession of the suit property, basis the ATS and taken from this date also, suit is time barred. Counsel for the Defendant placed reliance on the judgments of the Supreme Court in *Rathnavathi and Another v. Kavita Ganashamdas*, (2015) 5 SCC 223 and of this Court in *Karan Luthra v. M.K. Subba*, 2024 SCC OnLine Del 3141; and *Microtek Leasing and Finance Pvt. Ltd. v. Nisha Chhikara*, 2023 SCC OnLine Del 1679, to



buttress his arguments.

13. Counsel for the Plaintiff contested that the suit is barred by limitation and argued that Defendant admitted the receipt of part sale consideration post the agreed period of 8 months for performance of the ATS, without fixing any further date for performance, implying that date of performance became open-ended and thus the present case falls in second part of Article 54. Plaintiff has categorically stated in the plaint that around 07.12.2010, Defendant filed suit for possession concealing all material facts regarding execution of ATS on 10.08.2006; receipt of part sale consideration after the period of 8 months; return of original Lease Deed; and grant of NOC for electricity connection in favour of the Plaintiff and in response in corresponding paragraph 3(p) of the written statement, Defendant has admitted all facts and events, including the factum of concealment. Since parties waived the initial date fixed for performance of the ATS by extending the time for payment of balance sale consideration beyond the 8 months period, the prescribed period of limitation did not begin either from the date of execution of ATS or receipt of part sale considerations and suit is not barred applying first part of Article 54 of Limitation Act. Reliance was placed on the judgement of the Supreme Court in ***S.Brahmannad and Others vs K.R.Muthugopal (Dead) and Others (2005) 12 SCC 764***, wherein it was held that there is nothing strange in parties extending time for performance, even though the agreement had a fixed date, as Section 63 of the Contract Act, 1872 permits it. An agreement to extend the time need not be reduced to writing but may be proved in oral evidence or in some cases, even by evidence of conduct including forbearance on the part of other party. Where there is variation in the date fixed for performance, what was



originally covered by first part of Article 54, will fall in second part thereof.

14. Reliance was also placed on the judgement in ***Panchanan Dhara and Others vs Monmatha Nath Maity (Dead) through LRs and Another (2006) 5 SCC 340***, where the Supreme Court held that conduct of the parties is a relevant fact. Once a finding is arrived at that the time for performance of the contract had been extended by the parties, the time for filing a suit for specific performance shall be deemed to start running only when the Plaintiff had notice that performance had been refused. Performance of the contract may be dependent on several factors including grant of permission by the statutory authority and if a certain formality is to be completed and vendor does not fulfil his obligation, he cannot be permitted to take advantage of his own wrong and then take a plea of limitation. For the same legal proposition Plaintiff also relied on the judgement in ***Siddamsetty Infra Project Pvt. Ltd. Vs Katta Sujatha Reddy and Ors. [2024 (4) RCR Civil 865]***.

15. It was argued that Plaintiff had averred in the written statement in the suit filed in Saket Court that ATS continued as a valid agreement between the parties but Defendant was not performing his part of the obligations and for the first time in his replication dated 17.05.2012, Defendant refused performance. Thus the three years limitation period will be computed this date i.e. 17.05.2012 and the present suit filed on 17.03.2015 is within limitation.

16. It was also argued that Defendant never sent any communication calling upon the Plaintiff to perform its part of the ATS and/or terminating the ATS as also forfeiting the earnest money. This fact was never traversed by the Defendant in the pleadings or during cross examination of the



Plaintiff, who deposed as PW-1. In fact, Defendant kept assuring the Plaintiff that he will execute the Sale Deed as soon as his family disputes involving the suit property were resolved. No details of pending litigation were ever disclosed and for the first time Plaintiff got to know of the pending case in May, 2014 and this is recorded in order dated 16.03.2016 in FAO(OS) No. 49/2016 as also order dated 21.12.2016 in the present suit. It was only when TEST.CAS. No. 10/1996 was decided on 16.07.2024 that Defendant, on his own showing, became entitled to accept the balance sale consideration and execute the Sale Deed and from this date the final cause of action accrued in favour of the Plaintiff.

17. Plaintiff contended that the plaint filed by the Defendant in his eviction suit and written statement in the present suit are silent on the stand the Defendant now takes in arguments that filing of suit for possession is notice of refusal of performance of ATS and moreover, Defendant's suit for eviction was based on termination of lease and not refusal to perform ATS. Filing suit for eviction and refusing to perform ATS are separate and distinct concepts in law and one cannot be confused with the other. Defendant is erroneously drawing analogy with judgements, wherein it is held that filing of suit for possession is construed as notice under Section 106 of Transfer of Property Act, 1882 ('1882 Act'). This law is inapplicable for computing limitation under Article 54, where the party is required to establish notice of refusal of performance and there is no presumption in law. Therefore, filing of suit for eviction on 08.12.2010 cannot be considered as notice of refusal and limitation cannot start from the said date.

18. Heard learned counsels for the parties and examined their rival submissions.



19. Indisputably, ATS was executed between the parties on 10.08.2006 with respect to the suit property for a total sale consideration of Rs.2,30,00,000/- and part consideration of Rs.15,00,000/- was paid by the Plaintiff as earnest money. Defendant was to execute and register the Sale Deed in favour of the Plaintiff on receiving balance sale consideration within 8 months of execution of the ATS. Defendant filed a suit before the Saket Court on 08.10.2012, seeking recovery of possession of the suit property as also arrears of rent and damages in which Plaintiff filed a written statement on 31.10.2011, taking the defence of ATS and pleading that Plaintiff was no longer a tenant. Replication was filed by the Defendant refuting the stand of the Plaintiff in the written statement.

20. It is equally undisputed that suit being Civil Suit No. 173/2014 was decreed in favour of the Defendant on 14.10.2014, against which the Plaintiff filed an appeal being RFA No. 80/2015, which was dismissed by this Court on 02.02.2016 and the review petition was dismissed on 22.03.2016. The Supreme Court dismissed the SLPs on 12.05.2016 and admittedly, possession of the suit property was taken by the Defendant on 29.04.2016 with the help of a Court Bailiff and the Police.

21. Present suit was filed by the Plaintiff on 17.03.2015 and on receipt of summons, Defendant filed the written statement on 28.04.2015, while Plaintiff filed replication on 19.09.2015. On 14.01.2016, Court settled issues of which one was "*Whether the present suit is barred by limitation? OPD*". Both parties addressed arguments on the issue whether the suit is time barred.

22. I may first deal with the issue of limitation for the reason that if this is decided against the Plaintiff, there will be no need to delve into other issues.



Article 54 of Limitation Act prescribes limitation period for filing suit for specific performance and is extracted hereunder for ready reference:-

“54.	For specific performance of a contract.	Three 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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23. A bare reading of Article 54 shows that where the date for performance is fixed, non-compliance with the agreement on the said date will give rise to cause of action to file suit for specific performance and limitation period of three years will commence from this date. However, when no date for performance is fixed, limitation of three years would begin when Plaintiff has notice that performance is refused by the Defendant. Plaintiff claims that Defendant accepted part sale consideration post the original date fixed for performance of the contract without fixing any further date and thus the case squarely falls in second part of Article 54 for computing the prescribed period of limitation, which began to run only on 17.05.2012 when replication was filed in the suit filed by the Defendant refusing performance of the ATS, for the first time. Defendant canvassed otherwise and urged that limitation began to run from the date of execution of ATS on 10.08.2006 or from 10.04.2007, when the eight months period for execution of Sale Deed on receipt of balance sale consideration expired. At the highest benefit could be given to the Plaintiff from the date when last part payment was received towards sale consideration on 07.05.2008, but even from that date, the suit will be time barred. Since there was a fixed date for performance, present case would fall in first part of Article 54. Without prejudice, even assuming Plaintiff is right that its case is covered under



second part of Article 54, Plaintiff had due notice when summons were received by it in the suit filed by the Defendant for possession or at least when the written statement was filed on 31.10.2011 and taken from this date also this suit filed on 17.03.2015 is time barred.

24. Before moving further, I may allude to judicial precedents on the bar of limitation in filing a suit for specific performance under Article 54. In ***Rathnavathi (Supra)***, the Supreme Court held as follows:-

“40. Since it was the case of the plaintiff that she paid the entire sale consideration to Defendant 2 and was accordingly placed in possession of the suit house, the threat of her dispossession in 2000 from the suit house coupled with the fact that she having come to know that Defendant 2 was trying to alienate the suit house, gave her a cause of action to serve legal notice to Defendant 2 on 6-3-2000 calling upon Defendant 2 to perform her part and convey the title in the suit house by executing the sale deed in her favour. Since Defendant 2 failed to convey the title, the plaintiff filed a suit on 31-3-2000 for specific performance of the agreement.

41. Article 54 of the Limitation Act which prescribes the period of limitation for filing suit for specific performance reads as under:

<i>“54.</i>	<i>For specific performance of a contract.</i>	<i>Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.”</i>
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42. A mere reading of Article 54 of the Limitation Act would show that if the date is fixed for performance of the agreement, then non-compliance with the agreement on the date would give a cause of action to file suit for specific performance within three years from the date so fixed. However, when no such date is fixed, limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that the defendant has refused the performance of the agreement.

43. The case at hand admittedly does not fall in the first category of Article 54 of the Limitation Act because as observed supra, no date was fixed in the agreement for its performance. The case would thus be governed by the second category viz. when the plaintiff has a notice that performance is refused.

44. As mentioned above, it was the case of the plaintiff that she came to



know on 2-1-2000 and 9-1-2000 that the owner of the suit house along with the so-called intending purchaser are trying to dispossess her from the suit house on the strength of their ownership over the suit house. This event was, therefore, rightly taken as starting point of refusal to perform the agreement by Defendant 2, resulting in giving notice to Defendant 2 by the plaintiff on 6-3-2000 and then filing of suit on 31-3-2000.

45. In the light of the foregoing discussion, we uphold the findings of the High Court and accordingly hold that the suit filed by the plaintiff for specific performance of the agreement was within limitation prescribed under Article 54 of the Limitation Act.”

25. In **Karan Luthra (Supra)**, the Court was dealing with an application under Order 7 Rule 11 CPC filed by the Defendant seeking rejection of the plaint in a suit for specific performance of Agreement to Sell, permanent injunction and recovery of possession on the ground that the suit was barred by limitation since cause of action arose on 07.06.2011, while the suit was filed in the year 2018. The application was allowed and the plaint was rejected by the Court with the following observations:-

“31. The limitation for filing a suit for Specific Performance, in terms of Article 54 of the II Schedule to the Limitation Act, 1963, is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that the performance is refused.

32. Recently, in the case of A. Valliammai v. K.P. Murali (2023 INSC 823), the Apex court, while placing reliance on the case of Pachanan Dhara v. Monmatha Nath Mait, (2006) 5 SCC 340, observed that Article 54 of Part II of the Schedule to the Limitation Act, 1963 stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance. However, in alternative when no date is fixed, the limitation starts from the date when the plaintiff has notice that performance has been refused. Thus, when no specific time is fixed for performance, the courts must determine the date on which the plaintiff had notice of the defendant's refusal to perform the contract. It was further observed that as per section 9 of the Limitation Act, 1963, once the limitation period has commenced, it continues to run, irrespective of any subsequent disability or inability to institute a suit or make an application.

33. Thus, the question which arises is what was the time frame within which the Sale Deed was required to be executed and whether the



present suit for Specific Performance has been filed within the period of limitation in terms of Article 54 of Part II of the Limitation Act, 1963?

34. The first aspect which need consideration is whether there was any time period fixed for the performance of the Agreement to Sell dated 07.06.2011. According to the plaintiff, there was no time frame provided under the Agreement.

35. Since there was no date specified, it becomes apposite to determine the date of refusal of performance of the Agreement to Sell dated 07.06.2011, to determine if the present suit is barred by limitation.

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*37. Further, the plaintiff has sought to extend the limitation by asserting that when he approached the defendant for execution of the Sale Deed in July, 2011, he made an additional demand of Rs. 1 Crore which was paid by the plaintiff through cheque dated 29.08.2011. Even if his assertions are accepted, the limitation of three years would have commenced from August, 2011 and would have expired after three years in August, 2014. **The suit of the plaintiff is not within limitation even if calculated from August, 2011 as asserted by the plaintiff.***

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53. Moreover, once the cause of action arose on 07.06.2011 itself, subsequent demands or payment of additional money would not give rise to a fresh cause of action, extending the limitation. Moreover, from the averments of plaintiff himself, it emerges that the plaintiff got "Notice" of refusal/disinclination of defendant to execute the Sale Deed in November, 2011 when the defendant made additional demand of money. Subsequent demands made in 2013 or the Legal Notice served in 2015, were only subsequent acts and would not extend the date of commencement of limitation.

54. Thus, it is hereby concluded that the suit of the plaintiff is barred by limitation in terms of Article 54 Part II of the Limitation Act, 1963."

26. I may also allude to judgment of this Court in ***Microtek Leasing (Supra)***, where also the Court was in seisin of an application under Order 7 Rule 11 filed by the Defendant on ground of bar of limitation. The application was allowed by the Court and the plaint was rejected. The suit was filed by the Plaintiff for a decree of specific performance of Agreement to Sell dated 17.01.2015 in respect of a certain share of agricultural land. Defendant's case was that the Agreement to Sell provided



that the Sale Deed was to be executed on or before 16.10.2015 but the suit was filed in October 2020 and was barred by limitation under Article 54. Court referred to clauses 3, 4 and 8 of the Agreement to Sell as per which an outer date of performance was fixed as 16.10.2015 and observed that the case was covered in first part of Article 54 and that it was not for the Court to hazard a guess as to what prevented the Plaintiff from enforcing its right under the Agreement to Sell inspite of having paid more than 90% of sale consideration to the Defendant and was only to examine if the suit was filed within the period of limitation. It was held that the cause of action arose on 16.10.2015 and hence limitation period expired on 16.10.2018 and once the period began to run it could not be stopped. Thus the suit filed in October 2020 was barred by limitation.

27. Recently, the Supreme Court upheld the decision of the Trial Court dismissing a suit as barred by limitation under first part of Article 54 in the case of ***Usha Devi and Others v. Ram Kumar Singh and Others*, 2024 SCC OnLine SC 1915**. In this case, an agreement was executed by Shri Bihari Lal with the Plaintiff on 22.07.1983 for sale of land and the Sale Deed was to be executed within nine months upon payment of balance sale consideration. Sale Deed was not executed within the stipulated time and though the balance consideration was paid on 20.09.1985 and it was agreed that Sale Deed will be executed by 30.11.1985, it was not executed and fresh agreement was signed between the parties on 17.12.1989, on which date the balance of Rs.1,000/- remained to be paid. As per the second agreement, Sale Deed was to be executed and registered within one month i.e. upto 16.01.1990. The suit was filed before the Trial Court in September 1993 by the Plaintiff seeking specific performance. Defendant pleaded bar of



limitation and issue was framed on this aspect also. Trial Court decided the issue against the Plaintiff but the first Appellate Court allowed the appeal and decreed the suit directing execution and registration of the Sale Deed. The High Court upheld the judgment of the first Appellate Court and the Defendant approached the Supreme Court. Examining the facts of the case on the touchstone of Article 54, the Supreme Court upheld the order of the Trial Court dismissing the suit holding that limitation period expired on 16.01.1993 since the period of one month to execute the Sale Deed expired on 16.01.1990 and suit was liable to be dismissed on ground of limitation alone.

28. In this context, I may also refer to the judgment of the Supreme Court in *A. Valliammai v. K.P. Murali and Others*, 2023 SCC OnLine SC 1150, where the Supreme Court set aside the decree of specific performance passed by the Trial Court and affirmed by the High Court. Appellant therein had entered into an Agreement to Sell dated 26.05.1988 with Respondent No. 3 for sale of the suit property and earnest money was received. Balance sale consideration was payable within one year i.e. by 26.05.1989 though later, timeline was extended till 26.11.1989. On 11.07.1991, Respondent No. 3 issued legal notice to the Appellant to accept balance sale consideration and execute the Sale Deed within one month and finally a suit was filed for permanent injunction restraining the Appellant from dealing with the suit property till execution of the Sale Deed. Appellant contested the suit and in her written statement alleged that Respondent No. 3 was never ready and willing to perform the obligations under the Agreement and had therefore filed suit for injunction instead of suit for specific performance.

29. Order of temporary injunction was passed in favour of Respondent



No.3 by the Trial Court and later on 23.12.1992, Respondent No. 3 assigned his rights in favour of Respondents No. 1 and 2 who filed suit for permanent injunction against the Appellant and later also filed a suit for specific performance on 27.09.1995. The suit was defended by the Appellant on several grounds including bar of limitation. The Supreme Court set aside the decree of Trial Court observing that the Appellant must succeed since the suit for specific performance was clearly and without doubt barred by limitation under Article 54. Relevant paragraphs are as follows:-

“21. We must record at the outset that there is considerable force in the contention raised by the appellants relying upon the principle of constructive res judicata or Order II, Rule 2 of the Code. However, we are not giving an affirmative final opinion on these pleas. The appellants must succeed in this appeal since the suit for specific performance in O.S. No. 21 of 2004 is clearly and without doubt barred by limitation. To avoid prolixity, the arguments raised by the learned counsels for the parties would be referred to in our discussion and reasoning.

22. Article 54 of Part II of the Schedule to the Limitation Act, 1963 stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused. Section 9 of the Limitation Act, 1963 stipulates that once the limitation period has commenced, it continues to run, irrespective of any subsequent disability or inability to institute a suit or make an application.

23. It is an accepted position that Rs. 1,00,000/- was paid at the time of execution of the agreement to sell (Exhibit A-1), and the balance consideration of Rs. 31,45,000 was required to be paid by 26.05.1989. Time for payment of Rs. 31,45,000/- and execution of the sale deed was extended till 26.11.1989 vide the endorsement (Exhibit A-3). If we take the date 26.11.1989 as the date for performance, the suit for specific performance filed on 27.09.1995, is barred by limitation. However, we agree with the submission raised on behalf of K.P. Murali and S.P. Duraisamy, that the aforesaid time, as fixed vide the agreement to sell and the endorsement (Exhibit A-1 and A-3), was not the essence of the contract and therefore, the first part of Article 54 will not be applicable. Instead, the second part of Article 54 will apply. On the interpretation of Article 54, this Court in Pachanan Dhara v. Monmatha Nath Maity, has held that for determining applicability of the first or the second part, the court will



have to see whether any time was fixed for performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period, unless a case for extension of time or performance was pleaded or established. However, when no time is fixed for performance, the court will have to determine the date on which the plaintiff had notice of refusal on part of the defendant to perform the contract. Therefore, we have to examine whether K. Sriram or his assignees, K.P. Murali or S.P. Duraisamy, had notice that performance had been refused by A. Valliammai and, if so, from which date.

24. We have elaborately referred to the correspondence exchanged between the parties, namely, notice dated 11.07.1991 (Exhibit A-6), reply dated 09.08.1991 (Exhibit A-7), rejoinder dated 31.08.1991 (Exhibit S-13) and reply to the rejoinder dated 16.09.1991 (Exhibit S-14). We have also referred to the written statement filed by A. Valliammai. These are admitted documentary evidence and the contents thereof are not in debate. In our opinion, K. Sriram, in the notice dated 11.07.1991 (Exhibit A-6) and rejoinder notice dated 31.08.1991 (Exhibit S-13), had acknowledged having notice that A. Valliammai had refused to perform her part of the contract. K. Sriram filed a suit for permanent injunction on 15.07.1991 to restrain A. Valliammai from selling the Suit Property to third parties. In the plaint, there is a specific averment and statement that A. Valliammai was making excuses and going back on the terms previously agreed. A. Valliammai was negotiating with third parties for sale of the Suit Property. She was not abiding by the statement made before the Tiruverumbur Panchayat Union. K. Sriram had averred that he was going to file a suit for specific performance in a short time, and he was awaiting reply from A. Valliammai. The reply dated 09.08.1991 (Exhibit A-7) and rejoinder dated 16.09.1991 (Exhibit S-14) by A. Valliammai did not change the situation. These are written notices of refusal and not of acceptance of any obligation and affirmation. K. Sriram did not withdraw the suit for permanent injunction on the ground that he was satisfied with the reply and stand of A. Valliammai and hence the cause of action did not survive. K. Sriram continued with the suit and had enjoyed benefit of temporary injunction granted in his favour. The suit was un-conditionally dismissed as withdrawn on 23.12.1992, the day K. Sriram had transferred/assigned his rights under the agreement to sell (Exhibit A-1) in favour of K.P. Murali and S.P. Duraisamy (Exhibit A-2). K. Sriram, K.P. Murali and S.P. Duraisamy were aware of the refusal and thus the cause of action had arisen forcing them to approach the court with a prayer for injunction against A. Valliammai.

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28. The submission stating that the agreement to sell (Exhibit A-1) was to be specifically performed only after disposal of the partition suit in O.S. No. 787 of 1985 is misconceived and wrong. We have quoted the relevant



clause of the agreement to sell (Exhibit A-1). It do not state that the sale deed was to be executed only after disposal of the partition suit. A. Valliammai had only faithfully stated that there was no encumbrance or dispute over the Suit Property except the partition suit. The disputed Suit Property could still be sold and transferred. K. Sriram was clearly aware of the pending suit while executing the agreement to sell (Exhibit A-1), which was agreed despite the pending litigation. It was submitted on behalf of K.P. Murali and Duraisamy that, A. Valliammai, in her reply dated 09.08.1991 (Exhibit A-7) claimed that it was not possible for her to execute the contract till the disposal of the said partition suit. The argument is without merit, as this assertion by A. Valliammai shows her refusal to perform the agreement to sell (Exhibit A-1). A decision in the said suit was not a condition precedent to the execution of sale deed under the agreement to sell (Exhibit A-1). Neither had K. Sriram read the said reply as concurrence or acceptance by A. Valliammai to execute the sale deed post the decision in the said partition suit. On the other hand, as recorded previously, K. Sriram had continued to press the suit for permanent injunction in O.S. No. 1508 of 1991. Another fallacy in the argument raised on behalf of K.P. Murali and K.P. Duraisamy is that A. Valliammai's reply dated 09.08.1991 (Exhibit A-7) is not being read in its entirety. This is not a proper manner to construe a notice or reply and the contents and purport thereof. K. Sriram, and subsequently, K.P. Murali and K.P. Duraisamy had filed suits for permanent injunction.

29. For the aforesaid reasons, the 3-year limitation period to file a suit for specific performance commenced as early as when the K. Sriram had filed suit for injunction on 15.07.1991. A. Valliammai's reply dated 09.08.1991 (Exhibit A-7) or reply to rejoinder dated 16.09.1991 (Exhibit S-14) were again sufficient written notice to K. Sriram of her refusal and unwillingness to perform the agreement to sell (Exhibit A-1). The limitation period of three years under the second part of Article 54, which is from the date when the party had notice of the refusal by the other side, had expired when the suit for specific performance was filed on 27.09.1995. Suit in O.S. No. 21 of 2004 is barred by limitation.

30. Accordingly, the impugned judgment and decree for specific performance, as affirmed by the Division Bench, is set aside."

30. Coming back to the facts of the present case, the ATS was executed on 10.08.2006 and it was agreed therein that the balance of Rs.2,15,00,000/- shall be received from the purchaser at the time of registration of sale/transfer documents within eight months from the date of execution of the



ATS. The eight months period expired on 10.04.2007 but the Sale Deed was not executed. Since the date of performance was fixed, as per first part of Article 54, the limitation period of three years commenced from 10.04.2007 and the suit ought to have been filed on or before 10.04.2010 and therefore the present suit filed on 17.03.2015 is clearly barred by limitation. Even if limitation period is computed from 07.05.2008 when last part sale consideration was paid, the suit is barred by limitation.

31. Arguendo, even if the case of the Plaintiff is covered under second part of Article 54, limitation will begin from the date when Plaintiff had notice that performance was refused by the Defendant. It is an admitted position between the parties that Defendant issued a legal notice dated 02.11.2010, terminating the tenancy and seeking possession, payment of arrears of rent and damages. Since possession was not handed over and arrears of rent were not paid, Defendant filed a suit for recovery of possession/arrears of rent/damages in the Court of District Judge, Saket being Civil Suit No. 173/2014 (renumbered) on 08.12.2010. Plaintiff filed a written statement and refuted the stand of the Defendant that he was entitled to possession setting up the defence of execution of ATS between the parties. The written statement was filed on 31.10.2011 and it is clear that on this date Plaintiff was completely aware that Defendant was refusing performance of the ATS since he was seeking possession and recovery of rent, treating the Plaintiff as a tenant in the suit property. There can be no gainsaying that when the landlord files a suit for eviction and possession of the demised premises, it is notice to the tenant that the landlord has no intent to sell the property, rightly or wrongly. This was then the starting point of limitation under second part of Article 54 and the present suit seeking



specific performance ought to have been filed within three years from 31.10.2011. The argument of the Plaintiff that Defendant refused performance only when replication was filed by him cannot be accepted in this light. Equally misconceived is the argument that the Defendant had assured the Plaintiff that he will execute the Sale Deed after his family disputes were resolved as no evidence, oral or documentary, has been led by the Plaintiff in this regard and if this was so, it is not understood why the suit was filed in 2015, as the disputes were finally resolved in 2024, as per Plaintiff's own case.

32. At this stage, it is also pertinent to mention that in the examination-in-chief, PW-1, admitted that the ATS was to be performed within eight months from the date of its execution. In cross-examination, a pointed question was put to PW-1 as to whether he was aware of the pending litigation between the family members of the Defendant with respect to TEST. CAS. No. 10/1996, on or before 2009 since Plaintiff had received notice from the Court and in response, PW-1 answered "*It might be so that I had received the notice. But today I do not remember*". He further stated "*It is incorrect to suggest that I came to know about the pendency of litigation between Defendant and his family members in May 2014*". It is therefore clear that Plaintiff was aware of the pending litigation between the Defendant and his family members before 2009. The argument that Plaintiff was awaiting the resolution of the disputes between the Defendant and his family cannot be accepted for the simple reason that by its own showing the TEST. CAS. No. 10/1996 was decided on 16.07.2024, while the suit was filed in 2015, meaning thereby that Plaintiff did not in fact wait for the case to be decided and this ground is only an afterthought.



33. Even otherwise, this argument is irrelevant since the limitation period of three years under Article 54 commenced from the date fixed for performance or at the highest when the Plaintiff had notice of refusal of performance by the Defendant. Article 54 admits of no other interpretation and the present case is directly covered by the judgment of the Supreme Court in *A. Valliammai (Supra)* against the Plaintiff. The other factor that goes against the Plaintiff is that the suit filed by the Defendant for eviction, wherein Plaintiff had taken all the grounds it seeks to urge in the present suit, including non-payment of balance sale consideration due to Defendant's family disputes, breach of ATS by Defendant etc. was decided against it and Plaintiff lost upto the Supreme Court and possession of the suit property was taken by Defendant through the Court Bailiff. The judgements relied upon by the Plaintiff will not be of any aid. The proposition that time for performance of the contract can be extended by parties even without a written agreement, but that must be proved by evidence and if it is extended, first part of Article 54 will not apply, cannot be questioned. But in the facts of this case, as noticed above, even if the extended period upto 07.05.2008 is taken or the limitation period is taken, as commencing under second part of Article 54, Plaintiff has no case. The suit for eviction filed by the Defendant was notice of refusal of performance of the ATS by the Defendant and taken from the date of filing of the written statement by the Plaintiff, wherein he contested the eviction basis the ATS and payment of part sale consideration after expiry of last date fixed for performance of the contract, the present suit is barred by limitation.

34. Accordingly, Issue No. (i) is decided in favour of the Defendant and against the Plaintiff. In light of the dismissal of the suit on limitation, the



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Court need not enter into adjudication of other issues. The suit is accordingly dismissed as barred by limitation.

OCTOBER 08, 2025/S.Sharma/YA

JYOTI SINGH, J