



2026:DHC:2209



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

Date of decision: 11th MARCH, 2026

IN THE MATTER OF:

+ **I.A. 8516/2024**

IN

CS(OS) 813/2023

S SHALU CONSTRUCTIONS

.....Plaintiff

Through: Mr. Jai Sahai Endlaw & Ms.
Shambhavi Kala, Advs.

versus

ASHOK KAURA AND ORS.

.....Defendants

Through: Mr. Anupam Srivastava, Sr. Adv.
Mr. Archit Singh, Mr. Vasuh Misra,
Ms. Shreya Kunwar & Mr. Devesh
Bhatia , Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

I.A. 8516/2024

1. The present suit has been filed by the Plaintiff seeking specific performance of the Collaboration Agreement dated 01.02.2013 in respect of property bearing No. A-72, New Friends Colony, New Delhi measuring 492 sq. yds. (*hereinafter referred to as "the Suit Property"*).

2. Shorn of unnecessary details, the facts of the case are as under:

a. It is stated that in January, 2013, the Defendants approached the Plaintiff claiming themselves to be joint owners of the Suit Property and disclosed that two litigations concerning the Suit



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property were pending before this Court. The first litigation was CS(OS) No. 649/2010 titled “Ashok Kaura & Ors. v. Shashi Kaura & Ors.”, which was a partition suit between the family members i.e., the Defendants herein (*hereinafter referred to as ‘the partition suit’*). The second was CS(OS) No. 1448/2010, a suit for specific performance filed by one Mr. Ajit Pal Singh against Defendant Nos. 2 and 3 (*hereinafter referred to as ‘the specific performance suit’*).

- b. It is stated that the Defendants allegedly represented that they were facing pressure in the specific performance suit and required funds to settle the dispute, assuring the Plaintiff that upon such assistance, they would execute a favourable collaboration arrangement with the Plaintiff based on the preliminary decree dated 09.07.2010 in the partition suit.
- c. Relying on these representations, the parties executed the Collaboration Agreement on 01.02.2013. Under the agreement, the Plaintiff undertook to demolish the existing superstructure and construct a new building comprising basement, stilt, ground floor, first floor, second floor, third floor and terrace(s). In consideration of the development rights and allocation of built-up area, the Plaintiff agreed to pay a total monetary consideration of Rs.7.5 crores to the Defendants. It is stated that with the execution of the agreement, the Plaintiff paid a sum of Rs.2 crores in cash to Defendant Nos. 2 and 3, which was acknowledged through receipts and recorded in the



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Collaboration Agreement. The agreement further provided for division of the constructed property whereby the Plaintiff was to receive the entire first and second floors along with one servant quarter with WC on each floor, 50% of the stilt parking and proportionate undivided rights in the land and common areas. Defendants No. 2 and 3 were to receive the entire basement and ground floor along with one servant quarter with WC on the ground floor and 25% of the stilt parking, while Defendant No. 1 was to receive the entire third floor with terrace rights, one servant quarter with WC on the third floor and the remaining 25% of the stilt parking, each with proportionate undivided ownership rights in the land.

- d. It is stated that under the terms of the arrangement, the Plaintiff was responsible for undertaking redevelopment, applying for sanction plans and making agreed payments, whereas the Defendants were obliged to settle the pending litigations relating to the property, obtain mutation in their favour, secure conversion of the property from leasehold to freehold and thereafter, hand over vacant and peaceful possession of the Suit Property to the Plaintiff to enable redevelopment. The Plaintiff asserts that in furtherance of the agreement it applied for sanction plans with the SDMC and paid approximately Rs.12.38 lakhs towards municipal charges, and additionally paid Rs.20 lakhs on 16.03.2013 and Rs.12 lakhs on 01.11.2013 in cash to the Defendants at their request to facilitate disposal



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of the pending litigations.

- e. It is stated that CS (OS) No. 1448/2010 i.e., the specific performance suit, was unconditionally withdrawn on 11.07.2013.
- f. It is stated that the partition Suit i.e., CS (OS) No. 649/2010 continued on issues including valuation and preparation of the decree sheet and was ultimately disposed of on 14.07.2022 with directions to prepare the decree sheet.
- g. According to the Plaintiff, throughout this period the Defendants repeatedly assured that possession would be handed over after completion of these formalities, including mutation and conversion of the property from leasehold to freehold.
- h. The Plaintiff alleges that despite disposal of the earlier proceedings in July, 2022 and repeated follow-ups, the Defendants failed to hand over possession or perform their contractual obligations. It is stated that in October, 2023, the Defendants allegedly stopped responding and their family members threatened legal action, leading the Plaintiff to suspect that the Defendants intended to sell the property to a third party for higher consideration.
- i. Consequently, the Plaintiff published a public notice on 04.11.2023 and issued a legal notice dated 08.11.2023 demanding performance within fifteen days.
- j. Paragraph No.15 of the Plaint, which brings out the cause of action, reads as under:



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“15. That the cause of action for the relief of specific performance arose in favour of the Plaintiff and against the Defendants on 01.02.2013 when the Collaboration Agreement was executed between the Plaintiff and the Defendants. The cause of action thereafter arose on 25.09.2013 when the Plaintiff applied for the Sanction Plan qua the Suit Property before the South Delhi Municipal Corporation (SDMC) vide Application dated 25.09.2013 on behalf of the Defendants. The cause of action further arose on 09.10.2013 and 10.10.2013 when the SDMC acknowledged the payment made by the Plaintiff on behalf of the Defendant and granted the Sanction Plan. The cause of action arose when the Plaintiff paid a further sum of Rs. 30 lakhs to the Defendants on 16.03.2013 and 01.11.2013. The cause of action thereafter arose on each successive day when the Plaintiff would request the Defendants for the performance under the Collaboration Agreement but would be informed by the Defendants that the valuation of the Suit Property is taking time and the decree sheet is not being drawn up and as such, the Suit Property cannot be mutated in their names and nor can it be converted from leasehold to freehold. The cause of action arose on 03.09.2016 when the Registry had sought for the valuation report of the Suit Property and on 28.09.2018, when court notice was issued to the Principal Secretary (Revenue) and the concerned SDM to furnish the valuation reports of the Suit Property. The cause of action continued when the valuation report was not filed and the proceedings remained pending before this Hon’ble High Court. That The cause of action for the relief of specific performance arose in favour of the Plaintiff and against the Defendants on 14.07.2022, i.e. when CS (OS) 649 of 2010 was disposed off by this Hon’ble Court. The cause of action further arose on 03.10.2022, when the Plaintiff was provided a copy of the notice from the office of collector of stamp/ SDM (Defence Colony) by the Defendants stating that the stamp duty



payable on the settlement deed was deficient and the Plaintiff kept following up with the Defendants regarding the same. The cause of action thereafter arose when the Plaintiff was informed that the Defendant No. 1 was not keeping well and was therefore communicating with the wife and son of Defendant No. 1. The cause of action thereafter arose when despite repeated requests of the Plaintiff to meet with the Defendants on 16.10.2023, Ms. Anjali Kaura, wife of the Defendant No. 1 stopped responding to the messages of the Plaintiff and on 23.10.2023 when the son of the Defendant No. 1 threatened the Plaintiff with legal action without any rhyme or reason. The cause of action further arose when despite delivery of legal notice dated 08.11.2023 to the Defendants, they failed to act in terms thereof. However, it is pertinent to mention that till date, the Defendants have not refused performance of the contract. The cause of action for the alternative relief of recovery of money also arose similar to the relief of specific performance on all the dates as stated above and on 14.07.2022, i.e. when CS (OS) 649 of 2010 was disposed off by this Hon'ble Court and the Defendants failed to perform their obligations under the Collaboration Agreement. The cause of action is a subsisting and continuing one.”

- k. When the Defendants failed to perform their obligations under the Agreement, the Plaintiff has filed the present Suit seeking the following reliefs:

“Therefore, in the light of the above-mentioned facts and circumstances, this Hon'ble Court may kindly be pleased to pass a decree:

(a) Of Specific Performance of the Collaboration Agreement dated 01.02.2013;

(i) By directing and commanding the Defendants to



handover the possession of the Suit Property to the Plaintiff for redevelopment;

(ii) On the completion of redevelopment, to execute and register a sale deed in respect of Plaintiff's share in favour of the Plaintiff; and

(iii) By directing and commanding the Defendants to cooperate in all aspects in redevelopment of the Suit Property, including but not limited to, applying for necessary permissions and sanctions and any other obligations under the Collaboration Agreement;

(b) Of permanent injunction in favour of the Plaintiff and against the Defendants restraining the Defendants and their agents and representatives, from selling, assigning, alienating, transferring, encumbering, creating third party rights or disposing of the Suit Property being A-72, New Friends Colony, New Delhi admeasuring 492 sq. yds. in whole or in part or from parting with possession thereof in any manner whatsoever;

ALTERNATIVELY AND WITHOUT PREJUDICE

(c) Of recovery of Rs. 2,44,38,350/- (Rupees Two Crores Forty-Two Lakhs Thirty-Eight Thousand Three Hundred and Fifty only) already paid to the Defendants;

(d) Awarding pre-suit interest at the rate of 18% per annum on the principal amount of Rs. 2,44,38,350/- (Rupees Two Crores Forty-Two Lakhs Thirty-Eight Thousand Three Hundred and Fifty only) amounting to Rs. 4,76,54,782.50/- (Rupees Four Crores Seventy-Six Lakhs Fifty-Four Thousand Seven Hundred and Eighty-Two point Five Zero only) from date of payment, i.e. 01.02.2013, till the date of filing of the Suit;



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(e) Awarding pendente lite and future interest at the rate of 18% per annum on the principal amount of Rs. 2,44,38,350/- (Rupees Two Crores Forty-Two Lakhs Thirty-Eight Thousand Three Hundred and Fifty only) from the date of filing of the Suit till the date of actual payment;

(f) Awarding cost of the present Suit in favour of the Plaintiff and against the Defendants; and

(g) Pass such other Order(s) as this Hon'ble Court may deem fit and proper in the interest of justice and equity."

3. The present Application under Order VII Rule 11 of the CPC has been filed by the Defendants contending that the present Suit for specific performance is barred by limitation under Article 54 of the Limitation Act, 1963. As per the Defendants, the entire cause of action pleaded by the Plaintiff arises from events of 2013–2014, particularly the Collaboration Agreement dated 01.02.2013 and the alleged obligation to hand over possession by 05.02.2014 as reflected in the Plaintiff's own documents. It is stated that once a specific date for performance is fixed, limitation begins to run from that date, and the suit filed on 01.12.2023 is nearly seven years beyond the prescribed three-year limitation period. The Defendants further contend that even if the Plaintiff's case is accepted at face value, the last possible accrual of cause of action would be either (i) on 01.02.2013 (execution of the Collaboration Agreement), (ii) on 11.07.2013 (when the earlier suits CS(OS) 649/2010 and CS(OS) 1448/2010 were disposed of), or at the latest (iii) on 05.02.2014 (the agreed date for handing over possession). It is further stated that the Plaintiff discloses no legally sustainable



cause of action beyond that date.

4. Learned Counsel for the Defendants has drawn the attention of this Court to Article 54 of the Limitation Act, 1963 which deals with the period of limitation for filing a Suit for specific performance of a contract. He states that as per Article 54 of the Limitation Act, 1963, a Suit for specific performance of a contract must be filed within three years from the date fixed for the performance or from the date of refusal of such performance. Learned Counsel for the Defendant further draws the attention of this Court to Clause 2(1) of the Collaboration Agreement to state that the last of the payment was to be made within 15 months of the date of the Agreement and, therefore, the time period for executing the Agreement can be ascertained and the Suit ought to have been filed within three years of the said date. He states that clever drafting cannot enable the Plaintiff to get over the period of limitation. He places reliance on the Judgment of the Apex Court in Fatehji & Co. v. L.M. Nagpal, (2015) 8 SCC 390, wherein the Apex Court has held as under:

“6. The fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the limitation of filing the suit for specific performance. In fact both the courts below have rightly held that Article 54 of the Limitation Act does not make any difference between a case where possession of the property has been delivered in part-performance of the agreement or otherwise. In the same way the courts below have also concurrently held even if any permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendants have not obtained the said permission would not lead to



inference that no cause of action for filing the suit for specific performance would arise. Further it is also not the case for postponing the performance to a future date without fixing any further date for performance. The last extension for a period of six months w.e.f. 1-8-1976 sought for by the defendants expired on 1-2-1977. The present suit seeking for specific performance was filed by the plaintiffs on 29-4-1994, much beyond the period of three years.

7. Yet another circumstance was pointed out to prove the laches on the part of the plaintiffs. The sons of the second defendant filed a suit in July 1985 against Defendants 2, 3 and the plaintiffs seeking for declaration that the present suit property is their ancestral joint family property and the sale made by the defendants in favour of the plaintiffs be declared as null and void. The plaintiffs herein contested the said suit and it came to be dismissed on 5-4-1989. The suit for specific performance was not filed within three years from the said date also.

8. The plaintiffs averred in the plaint that the last and final cause of action accrued and arose to them after August 1991 when the defendants succeeded in hiding themselves and started avoiding the plaintiffs and the cause of action being recurring and continuous one, they filed the suit on 29-4-1994. As already seen the original cause of action became available to the plaintiffs on 2-12-1973, the date fixed for the performance of the contract and thereafter the same stood extended till 1-2-1977 as requested by the defendants. Though the plaintiffs claimed that oral extension of time was given, no particulars as to when and how long, were not mentioned in the plaint. On the other hand even after knowing the dishonest intention of the sons of the second defendant with regard to the



suit property in the year 1985, the plaintiffs did not file the suit immediately. The suit having been filed in the year 1994 is barred by limitation under Article 54 of the Limitation Act.”

5. Relying on the said Judgment, learned Counsel for the Defendant contends that the cause of action would arise at the end of the 15th month from the date of the Collaboration Agreement. He also draws the attention of this Court to a Judgment of the Co-ordinate Bench of this Court in Vipin Wadhwa v. Prashant Enterprises, **2025 SCC OnLine Del 7708**, wherein the co-ordinate Bench of this Court, has also placed reliance on the Judgment of the Apex Court in Fatehji (supra) and has held as under:

“42. In a suit for specific performance of the Agreement, the limitation is prescribed under Article 54 of the Limitation Act, 1963, which reads as under:—

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.

43. The essential aspect that needs to be considered is whether the suit for specific performance is within the limitation prescribed under Article 54 of the Limitation Act, 1963. The limitation period for such a suit is three years, which begins from either:

a. The date fixed for performance in the



agreement; or

b. If no such date is fixed, from the date when the plaintiff has noticed that performance has been refused.

44. *The key question for determination is whether any action or conduct by the defendant or the plaintiff extended or revived the limitation period, thereby keeping the right of the plaintiff to seek specific performance alive. Mere silence or inaction on the part of the defendant does not extend the limitation period unless there is a clear acknowledgement of liability within the meaning of Section 18 of the Limitation Act, 1963.*

45. *It is settled law that as per Section 9 of the Limitation Act, 1963, once the period of limitation starts running, it continues to run irrespective of any subsequent disability or inability to institute a suit or make an application.*

46. *On the interpretation of Article 54, the Supreme Court in Pachanan Dhara v. Monmatha Nath Maity⁹, 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 the part of the defendant to perform the contract.”*

6. Apart from limitation, the Defendants have raised another issue of non-compliance with Section 12A of the Commercial Courts Act, 2015. It is



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contended that the dispute arising from a collaboration agreement for redevelopment is a “commercial dispute” of specified value and therefore, mandatory pre-institution mediation was a condition precedent to filing the suit and since the Plaintiff instituted the suit on 01.12.2023 without exhausting the pre-institution mediation remedy and without pleading urgent interim relief, the Suit is alleged to be *non-est* in law and liable to be rejected under Order VII Rule 11(d) of the CPC. In support of his contention, learned Counsel for the Defendants places reliance on the Judgment of the co-ordinate Bench of this Court in Raj Kumar Gupta v. Jagan Nath Bajaj, **2022 SCC OnLine Del 2995**, wherein it has been held that a collaboration agreement is a joint venture business undertaken by two or more persons engaged in a single defined project.

7. *Per contra*, learned Counsel for the Plaintiff states that while deciding an Application under Order VII Rule 11 of the CPC, the Court has to only see the averments made in the Plaint. He states that the Collaboration Agreement consists of a reciprocal relationship between the parties. He states that the Defendants have not made payments according to the schedule. He also states that apart from that, it was also the obligation of the Defendant No.1 to get the properties mutated and the properties could not be mutated till the final decree was passed by this Court. He states that the final decree was finally passed only in 2022 and, therefore, it could not be said that Article 54 of the Limitation Act, 1963 would apply to the present case. He further states that since the Defendants have paid the entire money and since mutation could not have been effected till the preparation of decree, it cannot be said that the Suit is not within time.



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8. On the second aspect, learned Counsel for the Plaintiff places reliance on the Judgment passed by the Division Bench of this Court in Asif Ali Khan v. Manoj Kumar, **2024 SCC OnLine Del 2083**, wherein the Division Bench has held that a Collaboration Agreement wherein the collaborator/builder is to be given a portion of the property along with the rights of the land beneath, would not be a commercial dispute and, therefore, the present case cannot be said to be a Commercial dispute.

9. Heard the learned Counsels for the parties and perused the material on record.

10. As rightly contended by the learned Counsel for the Plaintiff, while deciding an Application under Order VII Rule 11 of the CPC, the Court only have to look at the averments made in the Plaint and the documents filed along with the Plaint to substantiate those averments.

11. Material on record discloses that it was the duty of the Defendants to get the suit property mutated. Relevant portion of the Collaboration Agreement reads as under:



2. i) The Developer shall pay a sum of Rs.7,50,00,000/- (Rupees seven crore fifty lac) to the Owners as non-refundable deposit payable as under :

Details of payment:

- i) Rs.2,00,00,000/- paid by cash to Ms.Shashi Kaura and Ms. Asha Kaura on signing of this Agreement, the receipt of which they do hereby acknowledge. The Developer shall be entitled to put its sign-board on the said property.
- ii) Rs. 30,00,000/- shall be paid to Ms.Shashi Kaura & Ms.Asha Kaura within 7 days of disposal of aforesaid two court cases
- iii) Rs. 40,00,000/- shall be paid within 45 days to Ms.Shashi Kaura & Ms. Asha Kaura, simultaneous to which the possession of said property will be handed over to Developer for development
- iv) Rs. 30,00,000/- shall be paid within next 45 days (within 90 days from the date hereof) to Ms.Shashi Kaura & Ms. Asha Kaura
- v) Rs.1,00,00,000/- shall be paid within 6 months from the date hereof to Shri Ashok Kaura
- vi) Rs.1,00,00,000/- shall be paid within 9 months from the date hereof to Shri Ashok Kaura
- vii) Rs.1,12,50,000/- shall be paid within 15 months from the date hereof to Ms. Shashi Kaura & Ms.Asha Kaura, simultaneous to execution & registration of Sale Deed in respect of Developer's in favour of the Developer
- viii)Rs.1,37,50,000/- shall be paid within 15 months from the date hereof to Shri Ashok Kaura, simultaneous to execution & registration of Sale Deed in respect of Developer's in favour of the Developer

Rs.7,50,00,000/-

TRUE COPY

Shashi Kaura & Asha Kaura
Ashok



- ii) The built-up area shall be shared between the parties as per under :

Developer's Share: entire First Floor, entire Second Floor, one servant quarter with WC on each floor, 50% of the Stilt area for car parking with right to use common areas, facilities and services along with proportionate undivided, indivisible and impartible ownership rights in the land underneath

Owner No.1 & 2:
(jointly) entire Basement, entire Ground Floor, one servant quarter with WC on ground floor, 25% of the Stilt area for car parking with right to use common areas, facilities and services along with proportionate undivided, indivisible and impartible ownership rights in the land underneath

Owner No.3 : entire Third Floor with terrace(s) above, one servant quarter with WC on third floor, 25% of the Stilt area for car parking with right to use common areas, facilities and services along with proportionate undivided, indivisible and impartible ownership rights in the land underneath

12. As rightly contended by the learned Counsel for the Plaintiff that the obligation of the Plaintiff could have been carried out only after the final decree is passed. The final decree was passed only in 2022 and, therefore, it cannot be said that the present Suit is belated. In any event, as rightly pointed out by the learned Counsel for the Plaintiff that the Agreement contains reciprocal obligations and unless it is shown that the reciprocal obligations have been carried out it cannot be said that the date is ascertainable. It is trite law that limitation is a mixed question of law and



fact and until and unless it can be clearly demonstrated that the Suit is barred by limitation, courts ordinarily do not reject the Plaint under Order VII Rule 11 of the CPC on the ground that the Suit is barred by limitation.

13. The Apex Court in Panchanan Dhara v. Monmatha Nath Maity, (2006) 5 SCC 340, while considering the applicability of Article 54 of the Limitation Act, 1963 in cases where permission is to be obtained from the authorities, has observed as under:

“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.

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.”

14. Similarly, in Urvashiben v. Krishnakant Manuprasad Trivedi, (2019) 13 SCC 372, the Apex Court, while considering Article 54 of the Limitation Act, 1963 in a suit for specific performance in context to Order VII Rule 11 of the CPC, has observed as under:

“15. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under Order 7 Rule 11(d)CPC. Equally, it is well settled that for the purpose of deciding application filed under Order 7 Rule 11 only averments stated in the plaint

<i>a</i> Description of suit	<i>l</i> Period of limitation	<i>o</i> Time from which period begins to run
<i>n</i> * 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 refused.



e can bbe looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the Limitation Act, 1963 prescribes the limitation of three years, for suits for specific performance. The said Article reads as under:

From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under Order 7 Rule 11, same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application.

17. The counsel for the appellants has placed reliance on the judgment in Prabhakar [Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] . In the abovesaid case, this Court has held that, even where no limitation period is prescribed by the statute, courts apply doctrine of delay/laches/acquiescence and non-suit litigants who approach the court belatedly without justifiable explanation. Delay and laches are to be examined with reference to facts of each case and the said judgment is not helpful to support the case of the appellant inasmuch as this matter arises out of an application filed under Order 7 Rule 11(d)CPC. The judgment in T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] pertains to eviction from tenanted premises which was contested by the tenant. In the said case where rejection of the plaint under Order 7 Rule 11(d) was considered on the ground that the plaint does not disclose cause of action but not a case for rejection of plaint on the ground of limitation. In Hardesh Ores [Hardesh Ores (P) Ltd. v. Hede and



Co., (2007) 5 SCC 614] it was the case falling in the first limb of Article 54 of the Limitation Act, 1963 but not a case falling under the second limb, where the time is not the essence of the contract. In the judgment in Dilboo [Dilboo v. Dhanraji, (2000) 7 SCC 702] this Court has considered relevant principles of applicability of Order 7 Rule 11CPC. Equally, I.T.C. Ltd. [I.T.C. Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] is a case concerning rejection of plaint under Order 7 Rule 11(a) but not case of rejection on the ground of limitation. In Raj Narain Sarin [Raj Narain Sarin v. Laxmi Devi, (2002) 10 SCC 501] the suit was filed after 40 years after execution of the sale deed and as a fact it was found that sale deed was to the knowledge of the plaintiff and he had not taken any steps to declare the sale deed invalid. In that context, the order passed under Order 7 Rule 11 was confirmed by this Court. In N.V. Srinivasa [N.V. Srinivasa Murthy v. Mariyamma, (2005) 5 SCC 548] the suit is for declaration but not for specific performance and in the said suit having regard to the facts of the case this Court has held that suit for declaration filed by the plaintiff is not maintainable. In Madanuri Rama [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] the suit was filed seeking cancellation of sale deed on the ground that property in question is a waqf property which cannot be sold to a private party. The aforesaid case is a case not concerning limitation under Article 54 of the Limitation Act, 1963.

18. On the other hand, in the judgment in Gunwantbhai [Gunwantbhai Mulchand Shah v. Anton Elis Farel, (2006) 3 SCC 634] this Court has held as under: (SCC p. 639, para 8)

“8. We may straightaway say that the manner in which the question of limitation has been dealt with by



the courts below is highly unsatisfactory. It was rightly noticed that the suit was governed by Article 54 of the Limitation Act, 1963. Then, the enquiry should have been, first, whether any time was fixed for performance in the agreement for sale, and if it was so fixed, to hold that a suit filed beyond three years of the date was barred by limitation unless any case of extension was pleaded and established. But in a case where no time for performance was fixed, the court had to find the date on which the plaintiff had notice that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof. We have explained the position in the recent decision in R.K. Parvatharaj Gupta v. K.C. Jayadeva Reddy [R.K. Parvatharaj Gupta v. K.C. Jayadeva Reddy, (2006) 2 SCC 428] . In the case on hand, there is no dispute that no date for performance is fixed in the agreement and if so, the suit could be held to be barred by limitation only on a finding that the plaintiffs had notice that the defendants were refusing performance of the agreement. In a case of that nature normally, the question of limitation could be decided only after taking evidence and recording a finding as to the date on which the plaintiff had such notice. We are not unmindful of the fact that a statement appears to have been filed on behalf of the plaintiffs that they did not want to lead any evidence. The defendants, of course, took the stand that they also did not want to lead any evidence. As we see it, the trial court should have insisted on the parties leading evidence on this question or the court ought to have postponed the consideration of the issue of limitation along with the other issues arising in the suit, after a trial.”

In the aforesaid case, it is clearly held that in cases falling in second limb of Article 54 finding can be recorded only after recording evidence. The said view expressed by this Court supports the case of the respondent-plaintiff.



19. In the judgment in Rathnavathi [Rathnavathi v. Kavita Ganashamdas, (2015) 5 SCC 223 : (2015) 2 SCC (Civ) 736] in paras 42 and 43 it was clearly held that when the time is not fixed in the agreement, the limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that the defendant has refused the performance of the agreement. In the judgment in Ahmadsahab Abdul Mulla (2) v. Bibijan [Ahmadsahab Abdul Mulla (2) v. Bibijan, (2009) 5 SCC 462 : (2009) 2 SCC (Civ) 555] while interpreting Article 54 of the Limitation Act, it is held that the words “date fixed for the performance” is a crystallised notion. The second part “time from which period begins to run” refers to a case where no such date is fixed. In Balasaria Construction (P) Ltd. v. Hanuman Seva Trust [Balasaria Construction (P) Ltd. v. Hanuman Seva Trust, (2006) 5 SCC 658] and Chhotanben [Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar, (2018) 6 SCC 422 : (2018) 3 SCC (Civ) 524] this Court clearly held that issue of limitation, being a mixed question of fact and law, is to be decided only after evidence is adduced.

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.”

15. The second issue pertains to the objection regarding non-compliance with Section 12A of the Commercial Courts Act, 2015. The Defendants contend that the present dispute arises out of a Collaboration Agreement and, therefore, falls within the ambit of a “commercial dispute” under Section 2(1)(c) of the Commercial Courts Act, 2015.

16. The question whether a collaboration agreement for redevelopment constitutes a “commercial dispute” is no longer *res integra*. The Division Bench of this Court in Asif Ali Khan (supra) has 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.”

17. In the abovementioned Judgment, the Division Bench has clarified that merely because an agreement relates to redevelopment of property, it does not *ipso facto* become a construction or infrastructure contract within the meaning of Section 2(1)(c)(vi) of the Act. The Division Bench held that where the substance of the transaction is transfer of immovable property or allocation of developed portions of the property, the dispute remains one



relating to immovable property and does not assume the character of a commercial dispute.

18. The Division Bench further observed that the nature of the agreement must be determined from its substance and not from incidental clauses linking payment or delivery to stages of construction. An agreement for sale or allocation of built-up area, even if arising out of a redevelopment arrangement, does not become a “construction contract” merely because construction activity is contemplated.

19. Applying the law laid down by the Division Bench of this Court in Asif Ali Khan (supra) to the facts of this case, it is seen that Collaboration Agreement reveals that the Developer i.e., Plaintiff was to pay a sum of Rs.7,50,00,000/- to the Defendants/owners and the Defendants/owners is not spending any money for construction of the property. Upon construction, the Plaintiff/Developer is entitled to the entire first floor, entire second floor and other areas and impartible ownership rights in the land underneath. Though the Agreement is a Collaboration Agreement, however, in fact, it is an Agreement to Sell of portion of the property and the cost of purchase is the construction of the property. Therefore, the Judgment - Asif Ali Khan (supra) fully applies to the facts of the present case. The present case is not one where the owner has employed a contractor to construct the property and is paying amount towards construction of the property, rather it is a case where Developer is purchasing the property at a price which is discernible from the construction and, therefore, makes the contract for sale of the property which will not come within the ambit of a commercial dispute.

20. In the present case, the Collaboration Agreement provides for



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redevelopment of the Suit Property and allocation of specific built-up portions to the Plaintiff in consideration of monetary payments and development rights. The dispute essentially concerns enforcement of rights in immovable property and reciprocal contractual obligations between private parties. It is not a contract for execution of construction works simpliciter, nor does it involve any commercial infrastructure project as contemplated under Section 2(1)(c)(vi).

21. In view of the ratio laid down in Asif Ali Khan (supra), the present suit cannot be categorised as a commercial dispute. Consequently, the objection regarding non-compliance with Section 12A of the Commercial Courts Act, 2015 is devoid of merit.

22. In view of the above, the Application is dismissed.

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List on 10.08.2026.

SUBRAMONIUM PRASAD, J

MARCH 11, 2026

Rahul