2025 INSC 42

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1525 OF 2023

INDIAN EVANGELICAL LUTHERAN CHURCH TRUST ASSOCIATION ... **APPELLANT**

VERSUS

SRI BALA & CO. ... **RESPONDENT**

J U D G M E N T

NAGARATHNA, J.

This appeal has been filed by assailing the order dated 15.03.2022 passed by the Madras High Court, Madurai Bench in C.R.P. (MD) No.1116 of 2011 dismissing the Civil Revision Petition filed by the appellant.

1.1 For the sake of convenience, the parties in the present appeal are being referred to as per their status and positions before the trial court.

Factual Background:

2. According to the plaintiff/respondent herein, the present dispute pertains to land measuring 5.05-acre being a portion of a

6.48-acre property known as Loch End at Kodaikanal, originally purchased by American missionaries of the Lutheran Church Missouri Synod and Missouri Evangelical Lutheran India Mission in 1912. The Kodaikanal International School (seeking to implead in the suit) is located across the road from Loch End. In 1975, an agreement was made between the American missionaries and the India Evangelical Lutheran Church Trust Association (defendant/ appellant herein) to transfer various properties, including the Kodaikanal property, to the defendant. This agreement was formalized through the joint filing of O.P. No.101/1975 under Section 7 of the Charitable and Religious Trust Act, 1921 before the District Judge, Madurai, leading to a decree dated 26.11.1975, appointing the defendant as the trustee of those properties for the objects of the Trust stated thereunder.

2.1 According to the plaintiff, the defendant being in need of funds decided to sell a part of those properties, including the 5.05 acres of Loch End, consisting of 12 out of 15 buildings (hereinafter referred to as "suit scheduled property"). An agreement to sell was executed on 26.04.1991 between the defendant and the plaintiff, i.e., M/s. Sri Bala & Co., for the suit scheduled property, on a total

sale consideration fixed at Rs.3,02,00,000/- (Rupees Three Crores and Two Lakhs only) and an advance payment of Rs. 10,00,000/- (Rupees Ten Lakhs only) was made. Partial possession of the property is said to have been handed over to the plaintiff. At that time, the impleading party was allegedly in possession of three of the twelve buildings on Loch End in the capacity of a tenant.

2.2 The plaintiff filed an unnumbered suit in the year 1993 before the Court of the Subordinate Judge, Dindigul Anna District for specific performance of the agreement to sell dated 26.04.1991, by seeking execution of the sale deed in respect of the suit scheduled property and for placing the plaintiff in possession of the property. The said suit was subsequently transferred to the Court of the Subordinate Judge, Palani. But the said suit was rejected *vide* order dated 12.01.1998 passed by the Court of Subordinate Judge, Palani due to non-payment of requisite court-fees by the plaintiff.

2.3 The plaintiff thereafter filed O.S. No.49/2007 before the Court of the Principal District Judge, Dindigul District, seeking specific performance of the sale agreement dated 26.04.1991, with a direction to the defendant to execute the sale deed in favour of

the plaintiff after receiving the balance sale consideration for the suit scheduled property.

2.4 The defendant sought rejection of the second suit by filing I.A. No.233/2007 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (for short, "Code"), on the ground that the subsequent suit for specific performance is barred by the principle of *res judicata* as the plaintiff had not filed any appeal against the rejection of the plaint in the previous suit. The defendant also contended that the subsequent suit for specific performance was barred by the law of limitation since it was filed after a gross delay of almost nine years and beyond the period stipulated under Article 54 of the Limitation Act, 1963 ("Limitation Act", for short).

2.5 The plaintiff filed its objections to the defendant's application for rejection of plaint and placed reliance on Order VII Rule 13 of the Code to argue that a rejection of a plaint does not preclude the presentation of a fresh plaint for the same cause of action. It was further contended by the plaintiff that as per the sale agreement, the Kodaikanal International School, which is in possession of part of the suit scheduled property in the capacity of a tenant, has to be evicted and the vacant possession ought to be handed over to

the plaintiff. Since the tenants had not been vacated from the property, the suit for specific performance of the sale agreement is not barred by Article 54 of the Limitation Act. Reliance was placed by the Plaintiff on an extension letter dated 15.07.1991 executed by the defendant's Secretary-cum-Treasurer namely Reverent A. Sundaram in favour of the plaintiff, which had extended the period of the sale agreement in light of multiple pending litigations with the impleading party.

2.6 The said application, i.e., I.A. No.233/2007, was dismissed by the trial court *vide* order dated 16.09.2010, on the grounds that the previous suit was not decided on merits and therefore the principle of *res judicata* would not apply and further, the issue of limitation period being extended to file the suit for specific performance in light of the pending litigations with the impleading party was a question of fact and the said issue had to be adjudicated only after examination of proper witnesses and documents during trial. Thus, the trial court refused to reject the plaint at such an early stage.

2.7 Being aggrieved by the order of the trial court, defendant preferred a civil revision petition before the High Court being C.R.P.

(MD) No.1116/2011. However, the High Court on 15.03.2022 dismissed the said Civil Revision Petition. The High Court observed that the previous suit was neither registered nor numbered and since the issues were not finally decided, it was not hit by the principle of *res judicata*. Further, the question of extension of the limitation period is a mixed question of fact and law which can be decided only after the recording of evidence and not at the stage of rejection of plaint. Thus, the High Court confirmed the order dated 16.09.2010 passed by the trial court on the application filed by the defendant for rejection of the plaint. The said order of the High Court in C.R.P. (MD) No.1116/2011 is under challenge in this appeal.

2.8 Two more orders arising out of the same set of facts were passed by the Madras High Court, Madurai Bench on the same date as that of the impugned order. The issues in those matters dealt with impleadment and beneficiary rights of the impleading party with respect to the suit scheduled property. This Court granted leave in those matters as well and had tagged them with the present matter. However, since the present appeal deals with an issue more germane to the suit and the relevance of those two

appeals rests on the fate of the present appeal, the present appeal was de-tagged by this Court from the other two connected matters *vide* order dated 24.10.2024.

Submissions:

3. We have heard Sri P.V. Balasubramaniam, learned senior advocate for the appellant/defendant and learned senior advocate Sri V. Giri for the respondent/plaintiff and perused the material on record.

3.1 Sri Balasubramaniam, at the outset submitted that both the High Court as well as the trial court were not right in dismissing the application filed by the appellant/defendant in the suit under Order VII Rule 11(d) of the Code. No doubt, the respondent/plaintiff in the suit had the right to file another suit on the same cause of action after rejection of the plaint in the earlier unnumbered suit filed by it in the year 1993 for the relief of specific performance of the agreement to sell dated 26.04.1991 on the strength of Order VII Rule 13 of the Code. However, the said suit had to be on the same cause of action as the earlier suit and within the period of limitation as prescribed under the Limitation Act, 1963. Thus, the rejection of the plaint in the earlier suit filed

by the respondent/plaintiff was not a bar to file a fresh suit on the same cause of action. The law provides for another opportunity to a plaintiff to reagitate on an identical cause of action despite the rejection of the plaint in the earlier suit filed by a plaintiff on the basis of Order VII Rule 13 of the Code. However, the second suit which is on the same cause of action must be maintainable in law and not hit by Order VII Rule 11(d) of the Code.

3.2 Elaborating on the aforesaid contention, learned senior counsel submitted that in the instant case, the first suit was filed in the year 1993 to seek specific performance of the agreement to sell dated 26.04.1991 which suit was filed within the period of limitation as prescribed under Article 54 of the Limitation Act. The plaint of the said suit was rejected *vide* order dated 12.01.1998 owing to non-payment of the requisite court-fees by the plaintiff. If another suit had to be filed by the very same plaintiff on the very same cause of action, then the second suit had to be within the prescribed period of limitation and otherwise not barred by law. In the instant case, the respondent/plaintiff filed the second suit only in the year 2007 for specific performance of agreement to sell dated 26.04.1991, when the cause of action accrued to the

respondent/plaintiff in the year 1993 itself, i.e., when the earlier suit was filed. Even if the period of the pendency of the said earlier suit till the rejection of the plaint on 12.01.1998 is excluded for the purpose of computing the limitation period which had commenced as early as in the year 1993, there is no explanation as to why the second suit i.e., O.S. No.49/2007 was filed only in the year 2007. At best, the limitation period could have extended for a period of three years from 12.01.1998 for the filing of the second suit by the respondent/plaintiff. That, the aforesaid facts are all admitted by the respondent/plaintiff in the plaint itself and hence, on that basis the trial court as well as the High Court ought to have exercised their jurisdiction in rejecting the plaint in O.S. No.49/2007 as the filing of the second suit in the year 2007 is way beyond the prescribed period of limitation.

3.3 It was contended that when the earlier suit was filed by the respondent/plaintiff, it was on the basis of the cause of action that had accrued to the plaintiff. If the plaint in the earlier suit was rejected on 12.01.1998, then the second suit ought to have been filed immediately thereafter so as to maintain a continuity in the cause of action or possibly within three years from the date of the

rejection of the plaint, which would mean that the suit ought to have been filed by 12.01.2001. But, in the instant case, the filing of the suit in the year 2007 gives rise to an inference that the respondent/plaintiff had acquiesced to the rejection of the plaint and thus had waived its right to seek specific performance of the agreement to sell dated 26.04.1991. Therefore, the filing of the second suit in the instant case is only an afterthought, a chance and being speculative in nature, ought to have resulted in rejection of the plaint on the basis of Order VII Rule 11(d) of the Code as being hit by Article 54 of the Limitation Act and therefore, barred in law.

3.4 It was therefore submitted that the plaint in O.S. No.49/2007 may be rejected by setting aside the impugned order and allowing this appeal.

3.5 *Per contra*, learned senior counsel Sri Giri supported the impugned orders rejecting the application filed by the appellant herein under Order VII Rule 11(d) of the Code and contended that there is no merit in this appeal. Elaborating on this submission, Sri Giri contended that on the basis of Order VII Rule 13 of the Code, the second suit, namely, O.S. No.49/2007 was filed. In the

plaint of the aforesaid suit, it has been categorically averred that the letter dated 15.07.1991 which was executed by the Secretary-cum-Treasurer Reverend, namely, A. Sundharam in favour of the plaintiff clearly extended the period of limitation owing to multiple litigations pending between the parties and the party seeking to implead in the said suit. Further, the question of a suit being barred under Article 54 of the Limitation Act is a mixed question of law and fact which cannot be decided on mere averments made in the plaint. Hence, the trial court as well the High Court rightly rejected the application filed by the appellant herein for seeking rejection of the plaint. It was contended that owing to the pendency of litigation between the parties, the time for performance under the agreement dated 26.04.1991 was automatically extended and therefore, it was only when the other litigation between the parties herein and the impleading party in the suit concluded that the cause of action for filing the second suit in the year 2007 resurfaced as till then it was dormant and hence, there is no merit in this appeal. It was contended that there was in fact no basis to file the application under Order VII Rule 11(d) of the Code by the appellant herein as the issue of limitation could have been adjudicated upon on conclusion of the trial and along with the

other issues which arise in the suit. It was submitted that there is no merit in this appeal and the same may be dismissed.

3.6 By way of reply, learned senior counsel for the appellant contended that there is a contradiction in the submission of the respondent/plaintiff inasmuch as when the earlier suit was filed in the year 1993 it was on the basis of a cause of action which had accrued to the plaintiff and there was no reference to letter dated 15.07.1991 extending the time for performance under the agreement or for that matter, resulting in extension of time for the filing of the suit akin to Section 18 of the Limitation Act. There is no reference to the letter dated 15.07.1991 in the earlier suit filed by the respondent/plaintiff and the same is also not admitted by the appellant herein. Even otherwise, the pendency of other litigations *vis-à-vis* the suit scheduled property could not have been a reason for filing the second suit as late as in the year 2007 for seeking specific performance of the agreement to sell dated 15.07.1991. On a comparison of the earlier suit and the present suit and on a holistic reading of the plaint in the second suit, the trial court as well as the High Court ought to have allowed the application filed by the appellant herein and rejected the plaint as

being barred in law, hit by the Limitation Act and thus, coming within the scope and ambit of Order VII Rule 11(d) of the Code. Therefore, learned senior counsel submitted that the present appeal may be allowed with costs.

Points for Consideration:

4. The short issue before this Court in this appeal is, whether the plaint in the subsequent suit for specific performance filed by the plaintiff, i.e., O.S. No.49/2007, is liable to be rejected in terms of Order VII Rule 11(d) of the Code on the ground that the said suit is barred by the law of limitation. What order is to be passed?

5. The detailed narration of facts and contentions would not call for a reiteration.

5.1 The undisputed facts of the case are that on 26.04.1991, the appellant/defendant entered into an agreement to sell the suit scheduled property to the respondent/plaintiff for a total consideration of Rs.3,02,00,000/- (Rupees Three Crores and Two Lakhs only) and an advance payment of Rs.10,00,000/- (Rupees Ten Lakhs only) was made. There was a time schedule for the payment of the balance in sale consideration within a period of twenty-seven months from 26.04.1991 which is also extracted in

paragraph 4 of the plaint. Thus, within a period of twenty-seven months from the date of the agreement, the entire balance of sale consideration had to be paid by the respondent/plaintiff to the appellant herein. However, as early as in 1993 itself, the suit for specific performance of the agreement to sell was filed by the respondent/plaintiff, which was an unnumbered suit, but the plaint in the said suit was rejected *vide* order dated 12.01.1998 passed by the trial court due to non-payment of the requisite court fees by the respondent/plaintiff.

5.2 Thereafter, it was only in the year 2007 that the respondent/plaintiff filed O.S. No.49/2007 seeking the very same relief of specific performance of the sale agreement on receipt of the balance sale consideration. This suit was filed on the strength of Order VII Rule 13 of the Code. It is in this suit that the appellant/defendant filed an application under Order VII Rule 11(d) of the Code on the ground that the said suit was barred by the law of limitation since it was filed after a gross delay of almost nine years from the date of rejection of the plaint in the earlier suit and the said suit not being maintainable as barred in law. Consequently, the plaint was subject to rejection. The trial court

dismissed the application filed for seeking rejection of the plaint by its order dated 16.09.2010 and the said order has been sustained by the High Court by the impugned order.

Legal Framework:

Order VII Rule 11 of the Code:

6. Since the issue in this appeal pertains to the correctness or otherwise of the impugned orders refusing rejection of the plaint, at this stage, we deem it necessary to refer to Order VII Rule 11 of the Code which deals with the grounds for rejection of a plaint:

> **"11. Rejection of plaint. -** The plaint shall be rejected in the following cases-
>
> (a) where it does not disclose a cause of action;
>
> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
>
> (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
>
> (d) where the suit appears from the statement in the plaint to be barred by any law:
>
> (e) where it is not filed in duplicate;
>
> (f) where the plaintiff fails to comply with the provision of rule 9:

> Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

6.1 In the instant case, an application was filed under Order VII Rule 11(d) of the Code where the ground of rejection of the plaint was that the suit appears from the statement in the plaint to be barred by any law. In this regard, our attention was drawn to various decisions of this Court with regard to rejection of plaint under Order VII Rule 11 of the Code which are as follows:

(i) In ***T. Arivandandam vs. T.V. Satyapal, (1977) 4 SCC 467***, this Court while examining the aforesaid provision has held that the trial court must remember that if on a meaningful and not a formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting

has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code, as observed by Krishna Iyer, J.

(ii) The object of the said provision was laid down by this Court in ***Sopan Sukhdeo Sable vs. Assistant Charity Commissioner, (2004) 3 SCC 137.*** Similarly, in ***Popat and Kotecha Property vs. State Bank of India Staff Association, (2005) 7 SCC 510,*** this Court has culled out the legal ambit of Order VII Rule 11 of the Code.

(iii) It is trite law that not any particular plea has to be considered, but the whole plaint has to be read. As was observed by this Court in ***Roop Lal Sathi vs. Nachhattar Singh Gill, (1982) 3 SCC 487,*** only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. Similarly, in ***Raptakos Brett & Co. Ltd. vs. Ganesh Property, (1998) 7 SCC 184,*** it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 Order VII of the Code is applicable.

(iv) It was further held with reference to Order VII Rule 11 of the Code in ***Saleem Bhai vs. State of Maharashtra, (2003) 1 SCC 557*** that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit i.e. before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

(v) In ***R.K. Roja vs. U.S. Rayudu, (2016) 14 SCC 275,*** it was reiterated that the only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case the entire

plaint comes under the situations covered by Order VII Rules 11(a) to (f) of the Code, the same has to be rejected.

(vi) In ***Kuldeep Singh Pathania vs. Bikram Singh Jaryal, (2017) 5 SCC 345,*** this Court observed that the court can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order VII Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.

(vii) In an application under Order VII Rule 11 of the Code, a plaint cannot *be rejected in part*. This principle is well established and has been continuously followed since the 1936 decision in ***Maqsud Ahmad vs. Mathra Datt & Co. AIR 1936 Lah 1021***. This principle is also explained in another decision of this Court in ***Sejal Glass Ltd. vs. Navilan Merchants Private Ltd., (2018) 11 SCC***

780 which was again followed in ***Madhav Prasad Aggarwal vs. Axis Bank Ltd.*, *(2019) 7 SCC 158***.

(viii) In ***Biswanath Banik vs. Sulanga Bose, (2022) 7 SCC 731***, this Court discussed the issue whether the suit can be said to be barred by limitation or not, and observed that at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) of the Code on the ground of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole.

Order VII Rule 13 of the Code:

7. Order VII Rule 13 of the Code reads as under:

> **"13. Where rejection of plaint does not preclude presentation of fresh plaint.-** The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

7.1 This Court in ***Delhi Wakf Board vs. Jagdish Kumar Narang (1997) 10 SCC 192*** was dealing with a case where an earlier suit had been rejected under Order VII Rule 11 of the Code in the year 1984 and a fresh suit was instituted on the same cause of action in the year 1986. The second suit was not allowed by the trial court as well as by the High Court. This Court set aside the orders of the trial court and the High Court and held that a suit filed on the same cause of action subsequent to rejection of the plaint in the previous suit under Rule 11 is not liable to be dismissed on the ground of being barred by order rejecting the plaint in the earlier suit.

7.2 In ***A. Nawab John vs. V.N. Subramaniyam, (2012) 7 SCC 738***, this Court examined the applicability of Order VII Rule 11 of the Code which requires a plaint to be rejected, *inter alia*, where the relief claimed is undervalued and/or the plaint is written on a paper insufficiently stamped, and, in either case, the plaintiff fails to either correct the valuation and/or pay the requisite court fee by supplying the stamp paper within the time fixed by the court. Rule 13 categorically declares that the rejection of a plaint shall not of its own force preclude the plaintiff from presenting a fresh

plaint in respect of the same cause of action. It was also observed that under Order VII Rule 11, a plaint, which has not properly valued the relief claimed therein or is insufficiently stamped, is liable to be rejected. However, under Rule 13, such a rejection by itself does not preclude the plaintiff from presenting a fresh plaint. It naturally follows that in a given case where the plaint is rejected under Order VII Rule 11 of the Code and the plaintiff chooses to present a fresh plaint, necessarily the question arises whether such a fresh plaint is within the period of limitation prescribed for the filing of the suit. If it is to be found by the court that such a suit is barred by limitation, once again it is required to be rejected under Order VII Rule 11 clause (d).

7.3 However, Section 149 of the Code, as interpreted by this Court in ***Mannan Lal vs. Mst. Chhotaka Bibi, (Dead) by LRs., (1970) 1 SCC 769***, confers power on the court to accept the payment of deficit court fee even beyond the period of limitation prescribed for the filing of a suit, if the plaint is otherwise filed within the period of limitation.

7.4 The case of ***Patil Automation Private Ltd. vs. Rakheja Engineers Private Ltd., (2022) 10 SCC 1*** further discussed that

under Order VII Rule 11 of the Code, the plaint can be rejected on six grounds. They include failure to disclose the cause of action, and where the suit appears from the statement in the plaint to be barred. Order VII Rule 12 of the Code provides that when a plaint is rejected, an order to that effect with reasons must be recorded. Order VII Rule 13 provides that rejection of the plaint mentioned in Order VII Rule 11 does not by itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Order VII of the Code deals with various aspects about what is to be pleaded in a plaint, the documents that should accompany and other details. Order IV Rule 1 provides that a suit is instituted by presentation of the plaint to the court or such officer as the court appoints. By virtue of Order IV Rule 1(3), a plaint is to be deemed as duly instituted only when it complies with the requirements under Order VI and Order VII. Order V Rule 1 declares that when a suit has been duly instituted, a summon may be issued to the defendant to answer the claim on a date specified therein. It was therefore held that rejection of earlier suit under Order VII Rule 11 does not bar fresh suit on the same cause of action provided the right of action is not barred by the law of limitation.

Averments in the plaint:

8. Since the plaint has to be read holistically in order to ascertain whether it is barred by limitation and consequently, to decide if the suit itself is not maintainable, we now embark on a meaningful reading of the plaint in O.S. No.49/2007 which is sought to be rejected by the appellant herein, as under:

(i) Paragraphs 1 and 2 of the plaint give details of the plaintiff and defendant.

(ii) In paragraph 3 of the plaint, it has been averred that there was a written agreement of sale executed on 26th April, 1991 with regard to the suit scheduled property by the defendant/vendor as the absolute owner of the property with the plaintiff/purchaser. The sale price mutually agreed upon was Rs.3,02,00,000/- (Rupees Three Crores and Two Lakhs only) and an advance amount of Rs.10,00,000/- (Rupees Ten Lakhs only) was paid earlier on 26th March, 1991, a month prior to the written agreement being executed, wherein a payment of Rs.9,00,000/- (Rupees Nine Lakhs only) was made by demand draft of Canara Bank dated 23.03.1991 payable at Nagerkoil and Rs.1,00,000/- (Rupees One Lakh only) by

way of an account payee cheque of City Union Bank, Madras.

(iii) Paragraph 4 of the plaint gives the time schedule for receipt balance sale consideration of Rs.2,92,00,000/- (Rupees Two Crores ninety-two lakhs only) in the following manner:

> "(a) Rs.10,00,000/-, (Rupees Ten lakhs only) to be paid within 3 months from the date this agreement subject to the condition that the vacant possession of the properties occupied by tenants are handed over to the plaintiff on or before 1.6.1991.
>
> (b) Rs.20,00,000/- (Rupees Twenty lakhs) to be paid within 9 months from the date of the agreement.
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> (c) Rs.30,00,000/- (Rupees Thirty lakhs) to be paid within 9 months from the date of the agreement.
>
> (d) Rs.30,00,000/- (Rupees Thirty lakhs) to be paid within 12 months from the date of the agreement.
>
> (e) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 15 months from the date of the agreement.
>
> (f) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 15 months from the date of the agreement.
>
> (g) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 21 months from the date of the agreement.
>
> (h) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 24 months from the date of the agreement..

(i) Rs.42,00,000/- (Rupees Forty two lakhs) paid within 27 Months from the date of the agreement. The true copy of the sale deed is submitted herewith and it may be read as part of the plaint allegations."

(iv) Paragraph 5 of the plaint avers that the entire balance consideration has to be paid within 27 months, i.e., before 25.07.1993 but time is not the essence of the contract. Further, there is a condition precedent that the vacant possession of the properties occupied by the tenant are to be handed over to the plaintiffs on or before 01.06.1991.

(v) In paragraph 6 it is stated that the suit scheduled property and the adjacent property are popularly known as Loch End property wherein there are 15 buildings in an extent of 6.48 acres, out of which the defendant agreed to sell 5.05 acres consisting of 12 buildings. That at the time of agreement the tenant was in occupation of three buildings and on the date of the agreement the plaintiff was put in possession of nine buildings detailed therein.

(vi) Paragraph 7 of the plaint states that at the time of the agreement to sell, one Rev. J. Isaac Moon was the President of the defendant company and the Board of Directors by its Resolution/Proceedings, authorised the

Secretary Treasurer Rev. A. Sundharam to execute the agreement to sell and the same was later ratified by the Board of Directors of the defendant company.

(vii) Paragraphs 8 to 16, 18 and 20 of the plaint are extracted as under:

> "8. Rev. J. Isaac Moon for the reasons best known to him did not like the suit property being sold to the plaintiff. Therefore, he whipped up the religious sentiments. As per the agreement to sell, the plaintiff was put in the possession of the tenanted premises also on 1.7.1991 by the defendant. Bin Rev. J. Isaac Moon instigated the tenant to proffer a false complaint against the personnel of the defendant and the plaintiff and her husband before the police as though the tenant was evicted by force Therefore proceedings were initiated u/s 145 of the code of Criminal Procedure in M.C. No. 1/1991 on the file of the Sub-Divisional Magistrate-Cum-Revenue Divisional Officer Kodaikanal.
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> 9. The plaintiff was forced to file a suit for permanent injunction against the tenant to protect possession in O.S.No.66 of 1991 on the file of the District Munsif Court Kodaikkanal and obtained ad-interim orders in I.A.No.75/1991 also. Again the tenant file a Writ petition before Hon'ble High Court in W.P.No.9551/ 1991 seeing protection further against the ad interim order in I.A.No.75/1991 the tenant also filed Revision before Hon'ble High Court in C.R.No.1846/1991 and obtained stay of operation of the order. In the meantime, the Sub Divisional Magistrate-cum-Revenue Divisional Office Kodaikanal on 9.12.1991 found possession only with the plaintiff and against which also the tenant filed a Revision

before the Hon'ble High Court in Court in Crl. R.C. No.113/1992.

10. Since the defendant's president Rev. J. Issac Moon, without any authority was acting against the decisions / resolutions / proceedings of the Board of Directors, the defendant extended the time for performance of the contract till the disposal of the all litigations on 15.07.1991. The true of copy, of the letter extending the time for performance is also submitted herewith for better appreciation of facts.

11. In the meantime, the plaintiff also filed a suit with deficit court fee for specific performance of the contract and the same was allowed to be rejected for non-payment of dealt court fee by the Hon'ble sub-court Palani. In the meantime the tenant also filed several applications in O.P.No. 101/1975 in 1.A.No. 1500/92 and 1.A.No. 1501/92 on the file of the District Court Dindigul questioning the validity of the agreement to sell and also filed various suits in O.S.No 13/93 and in O.S.No. 108/93 on the file of the District Munsif court Kodaikkanal for taking inventory and for permanent injunction against the defendant from alienating the suit property. In view of multiplicity of proceedings initiated by the tenant, the plaintiff was advised not to proceed with the suit for specific performance on the file of the Sub-Court Palani at that time. It is needless to submit that under order 7. Rule 13 of C.P.C. rejection of earlier plaint is not a bar to the suit.

12. Subsequently the Hon'ble High Court passed a common order setting aside the ad-interim orders passed in I.A. No. 75/91 in O.S.No. 66/91 on the file of District Munsif Court Kodaikanal and the order passed by SDK cum RDO/ Kodaikkanal in MC 1/1991 in C.R.P, No. 1846/91 and Crl.R.C.No. 113/92 respectively, In view of the order of the High court, the tenant with the help

of police took possession of not only the three tenanted premised but also the other 9 buildings in the occupation of the plaintiff, on 24.07.1997 with the help of Rev. Isaac Moon and the local police.

13. The plaintiff preferred special Leave Petitions against the orders of the Hon'ble High Court in W.P. No. 9551/1991, C.R.P. No. 1846/1991 and Cri. R.C.No, 113/1992: The Hon'ble Supreme Court in SI.O. (Crl) No.2037/97 (C) No. 2038/97 and 2039/97 set aside the order of the Hon'ble High Court and remanded the same an 24.3.1998.

14. In the meantime, the tenant not pressed that suit in O.S.No.13/93 and 108/96 on the file of the District: Munsif Court Kodaikkanal besides 1.A. No.1501/92 in O.P.101/1975 on the file of the District Court Dindigul.

15. Again, SUM Cum RDO Kodailcanal found the tenant to be in possession in M.C.No. 1/1991 after remand of the matter by the Hon'ble Supreme court of India, without hearing the plaintiff. Against which the plaintiff also preferred a Revision before Hon'ble High Court in Crl. R.C.No.511/1999. The Hon'ble High Court dismissed the Revision and titt7-51aintiff has also preferred, a special Leave Petition before Hon'ble supreme Court of India in SLP.No.1239/2005 and the same is still, pending along with other SLPs filed by the plaintiff arising out of orders dated 29.04.2003 in CRP.No.232/2003 by the Hon'ble High Court against the orders in I.A. No. 59/2002 in O.S.No. 66/1991 on the file of the District Munsif Court Kodaikanal and against the orders in CRP No.649/2003 which was filed against taking on file IA.55/2003 in O.S. No.66 of 1991 on the file of the District Munsif Court Kodaikkanal.

16. In the meantime, on 25.4.2003 the Hon'ble District Judge Dindigul dismissed I.A.No. 1500/1992 in

O.P.No. 101/1975 holding that the agreement to sell dated 26.4.1991 between the plaintiff and the defendant is valid and enforceable. The tenant also filed a memo exonerating, the plaintiff and the tenant even filed I.A.No. 1500/2012 to delete the name of the plaintiff from the decretal and orders in I.A. No. 1500/1992 after its dismissal. The Hon'ble District, Judge dismissed 1.A. No.1575/2005 on 5.4.2007.

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18. Further, there were various litigations over the election of conveners of three Synods, and board of Directors to the defendant company froth July 1992. An advocate - Commissioner was appointed by the Hon'ble High Court to conduct election to the defendant company. Therefore, the plaintiff could not negotiate or deal with the defendant for enforcement of the contract for sale as there was confusion in the part of the plaintiff filing this suit. Even not there is no clear picture as to the election of Directors to the Board of the defendant company, and the secretary of the company.

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20. As for as the suit for permanent injunction in O.S. No. 66 of 1991 on the file of the District Munsif Court Kodaikkanal now stands transferred to the file of the District Munsif chuft Dindigul and the same is still pending in O.S. No. 76/2005."

The aforesaid paragraphs refer to various proceedings initiated in the years 1991, 1992, 1993 and give the details of those proceedings, some of which had been disposed while other/s were pending on the date of the filing of the plaint or suit.

(viii) Paragraph 17 of the plaint reads as under:

> "17. In view of the cantankerous attitude of the tenant and vexatious litigation of the tenant, the plaintiff could not file the suit for specific performance of contract earlier. The plaintiff was always ready and willing to perform her part of the contract."

(ix) Paragraphs 19 and 21 of the plaint are extracted as under with regard to the filing of the suit for specific performance and cause of action for the same.

> "19. Any how, the plaintiff has not been advised to file this suit for specific performance. The plaintiff has paid urban land Tax to the tune of Rs.35,670/- and property Tax for Rs.6652/-.for the suit property. Further, the suit property had been attached for the Income Tax due to the govt. by the plaintiff.
>
> xxx
>
> 21. Cause of action for the suite arose on 26.4.1991 when the plaintiff and the Defendant entered into an agreement of sale with regard to the schedule mentioned property herein under on 15.07.1991 when the time for performance of contract is extended till the disposal of litigations launched at the instance of the president of the company through the tenant, on 25.4.2003 when the Hon'ble District Judge upheld the validity of the sale agreement dated 26.4.1991 and on 5.4.2007 when I.A.No.1515/2003 was dismissed to delete the name of the plaintiff and at Kodaikanal Township where the suit property situate within the jurisdiction of this Hon'ble Court."

8.1 What is significant to note is that in paragraphs 10 and 21, there is a reference to a letter dated 15.07.1991 said to have been issued by the defendant which is contended to be for the purpose of extending the time for performance of the contract till the disposal of litigation launched at the instance of the President of the defendant through the tenant. Hence, it is averred that the plaintiff was not advised to file the suit for specific performance which was ultimately filed in the year 2007, being the second suit for the same cause of action, when initially, (on the very same cause of action,) the unnumbered suit was filed on 21.07.1993 wherein the plaint was rejected on the ground that the court fee had not been tendered despite several opportunities being given.

8.2 Further, in paragraph 17 of the plaint, it has been averred that due to the cantankerous attitude and vexatious litigation of the tenant, the plaintiff could not file the suit for specific performance of the contract earlier, although the plaintiff was ready and willing to perform her part of the contract. This averment is totally alien to the filing of the second suit and has no bearing on the relief sought inasmuch as the tenant is not a party to the agreement dated 26.04.1991 and the filing and pendency of

litigation *vis-à-vis* the tenant was not an impediment at all to file the earlier suit for specific performance of the aforesaid agreement.

8.3 We are conscious and mindful of the fact that while considering the question of rejection of the plaint, it is the plaint alone which has to be read meaningfully and not any averment in the written statement. It is also necessary sometimes to consider the documents annexed to the plaint for a holistic and comprehensive reading of the plaint in order to decide whether the plaint ought to be rejected or not. But the present case is not a case where there is only one suit which has been filed by the respondent/plaintiff on the same cause of action and therefore, only a single plaint ought to be considered while deciding the issue of rejection of the plaint. This is a case where a second suit has been filed after the rejection of the plaint in the earlier suit filed on the very same cause of action and for the very same relief of seeking specific performance of agreement to sell dated 26.04.1991. In order to ascertain whether the plaint in the second suit ought to be rejected on the ground that it is barred by law such as the suit being filed beyond the prescribed period of limitation and therefore, is barred within the meaning of Order VII

Rule 11(d) of the Code, we think it is useful to consider the fact that an earlier suit was filed by the respondent/plaintiff on the very same cause of action in the year 1993 itself which resulted in the rejection of the plaint in the said suit owing to non-payment of the court fee. This fact is pertinent when the contention of the defendant/appellant herein is that the second suit filed on the basis of Order VII Rule 13 of the Code is barred as it has been filed beyond the prescribed period of limitation.

8.4 It is nobody's case that the earlier suit was not filed in time. The said suit was filed on 21.07.1993, on the basis of the cause of action that arose for seeking the relief of specific performance of the agreement to sell dated 26.04.1991. According to the appellant/defendant, if the cause of action had occurred in the year 1993 and therefore, the earlier suit was filed in time, without any reference to the so-called letter dated 15.07.1991 (on the basis of which extension of time for performance of the contract is pleaded in the second suit), the rejection of the plaint in the earlier suit, at best, could have extended the limitation period by three years from the date of the rejection of the plaint in the earlier suit so as to maintain a continuity in the cause of action for filing the

second suit. Significantly, in the earlier suit, the plaintiff did not aver that time for performance of the contract had been extended on the basis of the letter dated 15.07.1991 said to have been issued by the defendant. In fact, the stand of the respondent/plaintiff was to the contrary. It was to the effect that in the absence of performance of the agreement to sell dated 26.04.1991 by the defendant, the plaintiff had a cause of action to seek specific performance of the said agreement. Therefore, the earlier suit was filed in July, 1993 itself on the basis that the plaintiff had a cause of action to seek specific performance of the agreement to sell dated 26.04.1991. But owing to non-payment of requisite court fee, the plaint in the said suit was rejected on 12.01.1998. There was also no reference to any of the litigations which were pending between the parties prior to the filing of the earlier suit which is said to have resulted in postponement of the performance of the contract.

8.5 Thus, if really, the cause of action had arisen for the plaintiff to file the earlier suit on 01.07.1993 and the plaint in the said suit was rejected on 12.01.1998 owing to non-payment of the requisite court fee, then, at best, a second suit on the very same cause of action could have been filed by 12.01.2001 which would have been

within three years from the date of rejection of the plaint in the earlier suit. Therefore, the second suit, namely O.S. No.49/2007, could not have been filed in the year 2007 i.e., nine years after the rejection of the plaint in the earlier suit. The second suit not having been filed within a period of three years from 12.01.1998, which could be construed to be within the meaning of the Limitation Act, we are of the view that the second suit filed by the respondent/plaintiff is barred by the law of limitation and is thus not maintainable.

8.6 To get over this lacuna, the respondent/plaintiff has introduced the so-called communication/letter dated 12.07.1991 said to have been issued by the defendant by stating that time for performance of the contract had been extended till the conclusion of all other litigations between the parties herein and with the tenant. If reliance is now placed on the said letter by the respondent/plaintiff so as to seek a continuity in the cause of action, then the earlier suit could not have been filed at all in the year 1993 as then no cause of action had arisen to the plaintiff to file the earlier suit! But the fact remains that the plaintiff/respondent herein did file the earlier suit in the year 1993

on the ground that they had a cause of action to do so and for the very same relief of specific performance of the agreement to sell dated 26.04.1991 was sought but the plaint in the earlier suit came to be rejected owing to non-payment of the requisite court fee. Even after the rejection of the plaint in the earlier suit, steps were not taken on time, i.e., prior to 12.01.2001 to file the second suit on the basis of Order VII Rule 13 of the Code. Instead, the second suit has been filed only in the year 2007 belatedly and possibly only to keep the litigation alive between the parties which, in our view, is to make an unlawful gain from the speculative second suit by a settlement or in any other manner.

8.7 We do not appreciate the conduct of the respondent/plaintiff in filing of the second suit belatedly in the year 2007 when they could have done so prior to 12.01.2001, if they were really serious in seeking enforcement of the agreement to sell dated 26.04.1991. We say so on the basis of the action of the plaintiff in seeking the relief of specific performance of the agreement to sell dated 26.04.1991 by filing the earlier suit in the year 1993 itself. In the said suit there was no reference to the letter dated 26.07.1991. Moreover, litigation concerning the suit scheduled property was

not an impediment to file the earlier suit in the year 1993. Then, we ask, how could it become an impediment for postponing the filing of the second suit till the year 2007? We think that the reliance placed on the letter dated 26.07.1991 in the second suit filed in the year 2007 (and the glaring omission of any reference to the said letter in the earlier plaint filed in the year 1993) is mischievous and cannot be considered to hold that there was an extension of time for performance of the contract. Therefore, the second suit filed by the respondent in the year 2007 is not within the prescribed period of limitation and not as sought to be contended by the plaintiff.

8.8 Thus, on a holistic reading of the plaint it could be rejected as being barred by law of limitation. However, it is stated that normally the question of limitation would be a mixed question of law and fact. Hence, usually, on a reading of the plaint it is not rejected as being barred by the law of limitation. However, the above is not an inflexible rule. We wish to discuss the relevant Article under the Limitation Act applicable to the facts of the present case which is Article 113 for the second suit with a preface on the law of limitation.

9. The Limitation Act, 1963 consolidates and amends the law of limitation of suits, appeals and applications and for purposes connected therewith. The law of limitation is an adjective law containing procedural rules and does not create any right in favour of any person, but simply prescribes that the remedy can be exercised only up to a certain period and not beyond. The Limitation Act therefore does not confer any substantive right, nor defines any right or cause of action. The law of limitation is based on delay and laches. Unless there is a complete cause of action, limitation cannot run and there cannot be a complete cause of action unless there is a person who can sue and a person who can be sued. There is also another important principle under the Law of Limitation which is crystallized in the form of maxim that *"when once the time has begun to run, nothing stops it".*

9.1 In "Limitation Periods" by Andrew McGee, Barrister of Lincoln's Inn, published in 2002, the author says that, -

> "Once time has begun to run it will run continuously, except in certain situations. Time ceases to run when the plaintiff commences legal proceedings in respect of the cause of action in question. It is a general principle of some importance that the bringing of an action stops the running of time for the purposes of that action only."

9.2 It is further observed that the barring of the remedy under the law of limitation on the expiry of the limitation period would

not imply plaintiff's right being extinguished. Only the possibility of obtaining a judicial remedy to enforce the right is taken away. However, in certain cases, the expiry of the period of limitation would extinguish the plaintiff's right to seek remedy entirely. Further, according to Andrew McGee, the policy and justification for having a statute of limitation has been explained in the following words:

> "Policy issues arise in two major contexts. The first concerns the justification for having statutes of limitation at all and the particular limits that presently exist. The second concerns the procedural rules that apply after an action has been commenced. Arguments with regard to the policy underlying statutes of limitation fall into three main types. The first relates to the position of the defendant. It is said to be unfair that a defendant should have a claim hanging over him for an indefinite period and it is in this context that such enactments are sometimes described as "statutes of peace". The second looks at the matter from a more objective point of view. It suggests that a time-limit is necessary because with the lapse of time, proof of a claim becomes more difficult-documentary evidence is likely to have been destroyed and the memories of witnesses will fade. The third relates to the conduct of the plaintiff, it being thought right that a person who does not promptly act to enforce his rights should lose them. All these justifications have been considered by the courts."

9.3 Further, to say that a suit is not governed by the law of limitation runs foul of the Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or

application instituted after the prescribed “period of limitation” must, subject to the provisions of Sections 4 to 24, be dismissed, although limitation has not been set up as a defence. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(j) also defines “prescribed period” to mean the period of limitation computed in accordance with the provisions of the Limitation Act. The court's function on the presentation of plaint is simply to examine, whether, on the assumed facts, the plaintiff is within time. The court has to find out when the “right to sue” accrued to the plaintiff.

9.4 Further, if a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for under the Limitation Act. It prescribes a period of three years from the date when the “right to sue” accrues. Under Article 120 of the erstwhile Limitation Act, 1908, it was six years, which has been reduced to three years under Article 113 of the present Act. According to the third column in Article 113, time

commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted ***[State of Punjab vs. Gurdev Singh, (1991) 4 SCC 1].***

9.5 This Court in ***Shakti Bhog Food Industries Ltd. vs. Central Bank of India, (2020) 17 SCC 260,*** stated that the expression used in Article 113 of the 1963 Act is "when the right to sue accrues", which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas Article 113, being a residuary clause, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.

9.6 Article 113 of the Limitation Act reads as under:

"PART X – SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

	Description of suit	Period of limitation	Time from which period begins to run
113.	Any suit for which no period of limitation is provided elsewhere in the Schedule.	Three years	When the right to sue accrues."

Article 113 of the Limitation Act is an omnibus Article providing for a period of limitation not covered by any of the specific Articles. No doubt, Article 54 of the Schedule to the Limitation Act is the Article providing for a limitation period for filing a suit for specific performance of a contract. For immediate reference, the said Article is extracted as under:

	Description of suit	Period of limitation	Time from which period begins to run
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.

9.7 In the present case, the earlier suit was filed by the respondent/plaintiff in July, 1993 on the basis of Article 54 referred to above and the plaint in the said suit was rejected on 12.01.1998. The second suit being O.S. No.49/2007 was filed on

the strength of Order VII Rule 13 of the Code for the very same cause of action and for seeking the very same relief of specific performance of the agreement dated 26.04.1991 as the plaint in the earlier suit was rejected on 12.01.1998. Therefore, it cannot be said that the second suit namely O.S. No.49/2007 was filed as per Article 54 of the Limitation Act. Since this is a suit filed for the second time after the rejection of the plaint in the earlier suit, in our view, Article 54 of the Limitation Act does not apply to a second suit filed for seeking specific performance of a contract. Then, the question is, what is the limitation period for the filing of O.S. No.49/2007. We have to fall back on Article 113 of the Limitation Act.

9.8 Under Article 113 of the Limitation Act, time commences to run when the right to sue accrues. This is in contradistinction to Article 54 of the Limitation Act relating to a suit for specific performance of a contract which is on the happening of an event. No doubt, the second suit which is the present suit filed by the respondent/plaintiff is also for specific performance of the contract but the right to sue accrued to file the second suit is on the basis of Order VII Rule 13 of the Code subsequent to the rejection of the plaint in the earlier suit on 12.01.1998. Therefore, the right to sue

by means of a fresh suit was only after 12.01.1998. The expression "when the right to sue accrues" in Article 113 of the Limitation Act need not always mean "when the right to sue first accrues". For the right to sue to accrue, the right sought to be vindicated in the suit should have already come into existence and there should be an infringement of it or at least a serious threat to infringe the same *vide* ***M.V.S. Manikyala Rao vs. M. Narasimhaswami, AIR 1966 SC 470***. Thus, the right to sue under Article 113 of the Limitation Act accrues when there is an accrual of rights asserted in the suit and an unequivocal threat by the defendant to infringe the right asserted by the plaintiff in the suit. Thus, "right to sue" means the right to seek relief by means of legal procedure when the person suing has a substantive and exclusive right to the claim asserted by him and there is an invasion of it or a threat of invasion. When the right to sue accrues, depends, to a large extent on the facts and circumstances of a particular case keeping in view the relief sought. It accrues only when a cause of action arises and for a cause of action to arise, it must be clear that the averments in the plaint, if found correct, should lead to a successful issue. The use of the phrase "right to sue" is synonymous with the phrase "cause of action" and would be in consonance when one uses the

word “arises” or “accrues” with it. In the instant case, the right to sue first occurred in the year 1993 as the respondent/plaintiff had filed the first suit then, which is on the premise that it had a cause of action to do so. The said suit was filed within the period of limitation as per Article 54 of the Schedule to the Limitation Act.

9.9 Thus, generally speaking, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. Article 113 of the Schedule to the Limitation Act provides for a suit to be instituted within three years from the date when the right to sue accrues and not on the happening of an event as stated in Article 54 of the Schedule to the Limitation Act.

9.10 In the facts and circumstances of the present case, it is also necessary to apply Section 9 of the Limitation Act while applying Article 113 thereto. Section 9 reads as under:

"9. Continuous running of time.—

Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues."

Section 9 is based on the general principle that when once limitation has started to run, it will continue to do so unless it is arrested by reason of any express statutory provision. Period of limitation can be extended, *inter alia*, when cause of action was cancelled such as by dismissal of a suit. Ordinarily, limitation runs from the earliest time at which an action can be brought and after it has commenced to run, there may be revival of a right to sue where a previous satisfaction of a claim is nullified with the result that the right to sue which has been suspended is reanimated [***Pioneer Bank Ltd vs. Ramdev Banerjee, (1950) 54 Cal WN 710***]. In that case, the court distinguished between suspension and interruption of limitation period.

9.11 Once time has begun to run, it will run continuously but time ceases to run when the plaintiff commences legal proceedings in respect of the cause of action in question. It is a general principle

of some importance that bringing an action stops running of time for the purpose of that action only [*Andrew McGee, Limitation Periods, 4th Edn., Sweet & Maxwell, chapter 2, para1*]. The Indian law also follows the English law ***[James Skinner vs. Kunwar Naunihal Singh, ILR (1929) 51 All 367, (PC)].*** Intervention of court in proceedings would prevent the period of limitation from running and date of courts' final order would be the date for start of limitation [***N Narasimhiah vs. State of Karnataka, (1996) 3 SCC 88***].

[Source: Tagore Law Lectures, U N Mitra, Law of Limitation and Prescription, Sixteenth Edition, Volume 1, Sections 1-32 & Articles 1-52]

9.12 Applying the aforesaid dictum to the facts of the present case, it is observed that the respondent/plaintiff had filed the suit for specific performance of the agreement to sell dated 26.04.1991 in the year 1993 itself. The plaint in the said suit was rejected on 12.01.1998. The plaintiff could have filed the second suit on or before 12.01.2001 as it got right to file the suit on 12.01.1998 on the rejection of the plaint in the earlier suit filed by it. This is on the basis of Order VII Rule 13 of the Code. However, the limitation period expired in January, 2001 itself and the second suit was filed belatedly in the year 2007. The cause of action by then faded and

paled into oblivion. The right to sue stood extinguished. The suit was barred in law as being filed beyond the prescribed period of limitation as per Article 113 to the Schedule to the Limitation Act. Hence the second suit is barred under Order VII Rule 11(d) of the Code. We therefore have no hesitation in rejecting the plaint in O.S No.49/2007 filed by the respondent herein even in the absence of any evidence being recorded on the issue of limitation. This is on the admitted facts. Thus, on the basis of Order VII Rule 11(d) of the Code read with Article 113 of the Limitation Act by setting aside the impugned orders of the High Court and the trial court and by allowing the application filed under Order VII Rule 11(d) of the Code. Consequently, this appeal is allowed.

Parties to bear their respective costs.

. . . . . J.
(B.V. NAGARATHNA)

. . . . . J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
JANUARY 08, 2025.