

(2025) 06 KAR CK 0198
In the Karnataka High Court, Principal Bench
Case No : Civil Revision Petition No. 24 Of 2025

M/S Akshay Enterprises & Ors

APPELLANT

Vs

Salarpuria Hi Rise Pvt Ltd & Ors.

RESPONDENT

Date of Decision : 13-06-2025

Acts Referred:

Citation : (2025) 06 KAR CK 0198

Hon'ble Judges : C.M. Poonacha, J

Bench : Single Bench

Advocate : Shivareddy T N

Final Decision : Disposed Of

Judgement

R Devdas, J

CAV ORDER

1. This Civil Revision Petition is filed by defendant No.1 before the Trial Court, aggrieved of the impugned order dated 20.12.2024, whereby the interlocutory application filed by defendant No.1 under Order VII Rule 11 of CPC was rejected by the trial court.

2. For the sake of convenience, the parties shall be referred to in terms of their ranking before the trial court.

3. Learned Senior Counsel Sri Dhyan Chinnappa, appearing for defendant No.1 submitted that this Court had an occasion to consider a similar matter between the parties in CMP No.75/2020, where similar such MoU was entered into between the parties on 04.02.2011 (in the present case the MoU is dated 14.02.2011) in respect of different set of lands. As in the present case, there too a legal notice was got issued by the plaintiff on 13.11.2019 calling upon the defendant to specifically perform and complete all obligations under the MoU, failing which the defendant was called upon to refund the amount deposited by the plaintiff under the MoU, along with interest. In the present case, legal notice

was issued by the plaintiff on 18.09.2019 and the 1st defendant issued a reply on 03.10.2019 denying any obligation of specific performance arising out of the MoU, while contending that said MoU does not create any legal obligation on the 1st defendant. It was also clearly contended that the claims of the plaintiff are barred by limitation. However, in the other case, since an arbitration clause was contained in the said MoU, the plaintiff herein had to approach this Court by filing a Civil Miscellaneous Petition invoking Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitral Tribunal to adjudicate the disputes arising out of MoU dated 14.02.2011. This Court has held that the plaintiff-Company is guilty of waiting for an unreasonably long time to initiate action against the defendant. It was noticed that not a scrap of paper is available on record to show that the parties had mutually agreed to extend the time for completion of the contract. In view of the time fixed therein i.e., three months to procure the lands and get the scheduled lands converted from agricultural to non-agricultural purposes, this Court held that after lapse of three months, no efforts were made by the plaintiff-Company to seek repayment of the advance amount. Accordingly, having come to the conclusion that it is a clear case of 'deadwood', the CMP was dismissed.

4. The learned Senior Counsel would further contend that in para 10 of the plaint, it is contended by the plaintiff that the 1st defendant sought confirmation from the plaintiff that it would obtain 'B' katha at its cost and in order to obtain 'A' katha for each parcel of land and thereafter the kathas could be clubbed together and that the plaintiff would have to bear the costs. However, it is contended by the plaintiff that it declined to accept the request made by the 1st defendant. Attention of this Court is also drawn to para 11 of the plaint where it is clearly stated that although the MoU stipulated the 1st defendant to acquire ownership and get the lands converted within three months from the date of the MoU, there was no sign of the 1st defendant complying with the said requirement. However, details of the items of the schedule properties where agreements of sale were obtained by the 1st defendant with the owners are given in a tabular column in paragraph 11 while also stating that the 1st defendant got a sale deed dated 17.11.2014 executed from the owners in respect of one item of property. It is averred in the plaint that there were several e-mail communications between the parties and the plaintiff and its lawyers made several requisitions to the 1st defendant to comply with the terms of the MoU. It is contended that one Mr.Pradeep Joe, who was also a witness to the MoU, tried to persuade the 1st defendant to comply with the terms of the MoU. It is contended in paragraph 18 that pursuant to the assurances of the 1st defendant, after the intervention of Mr.Pradeep Joe, the plaintiff addressed an e-mail on 27.06.2016 to the defendants attaching the list of requisitions and for needful action. It is contended that one Mr.Kiran Poonacha, who is part of the Cornerstone Group (one of the defendants) had also made e-mail communication on 28.06.2016. It is alleged in the plaint that despite all these requisitions, the 1st defendant made half-hearted attempt in fulfilling the obligation. It is

therefore clear from the plaint averments that there is no pleading to the effect that the 1st defendant gave anything in writing to extend the period for completion of the MoU. It is submitted that the Hon'ble Supreme Court has clearly held that mere exchange of letters or e-mails will not extend the period of limitation.

5. It is further pointed out that the plaintiff got issued a legal notice dated 18.09.2019 calling upon the defendant to come forward to fulfill its obligation under the MoU. It is stated in paragraph-30 that inspite of the legal notice being issued, the defendant failed to adhere to the claims of the plaintiff. However, the cause of action arose for the plaintiff immediately after expiry of three months from the date of the MoU, i.e., October, 2011, but the suit is filed in the year 2019, which is clearly time barred.

6. Per contra, learned Senior Counsel Sri K.G.Raghavan, appearing for the plaintiff contended that this case is not the same as the other cases referred to by the learned Senior Counsel for 1st defendant, although the parties are similar. Learned Senior Counsel contended that the legal notice was got issued by the plaintiff on 18.09.2019 and the suit is filed in the year 2019 itself. The contention of the 1st defendant that the cause of action arose for the plaintiff in October, 2011 cannot be accepted, having regard to the averments made in the plaint. Attention of this Court is also drawn to Article 54 of the Limitation Act, which prescribes that for specific performance of a contract, the period of three years shall commence when the plaintiff has noticed that performance is refused. It is contended that the first part of the said Article regarding performance when date is fixed, would not apply to the facts and circumstances of this case. It is also contended that the trial court has rightly accepted the contention of the plaintiff that the extension of time for completion of the contract need not always be in writing. The conduct of the parties, having regard to the evidence that could be placed on record is to be weighed while considering such question of limitation which are always a mixed question of law and facts.

7. Heard the learned Senior Counsels for the 1st defendant and the plaintiff and perused the petition papers.

8. As rightly contended by learned Senior Counsel Sri K.G.Raghavan, unlike the other cases between the parties which have already been decided by this Court, in this case it is noticeable that the legal notice was got issued by the plaintiff on 18.09.2019 and a reply was given by the 1st defendant on 03.10.2019, denying its obligation of specific performance arising out of the MoU. The suit is filed in the month December, 2019. Therefore, on that count the suit cannot be ousted.

9. On the other hand, it is sought to be contended on behalf of the 1st defendant that the plaintiff has admitted in the plaint that three months were fixed for the 1st defendant to secure the said property in its name; to get the conversion of schedule 'B' property; to make out good and marketable title and to secure one combined katha from BBMP for the entire extent of 30 acres 21 guntas. It is

therefore sought to be contended that time for completion of the contract, at the hands of the 1st defendant was fixed at three months from the date of the MoU and therefore the cause of action arose for the plaintiffs immediately after expiry of three months. This contention cannot be accepted, having regard to catena of decisions where it is held that such issue regarding limitation are required to be decided, looking into the evidence that could be brought on record. The trial court has rightly held that the law in this regard is that the extension of period for completion of the contract can be decided having regard to the conduct of the parties and it is not always necessary that the extension of the period should be in writing.

10. Unlike the other cases between the parties, in the present case the suit has been filed within the prescribed period, immediately after a reply is given by the 1st defendant, denying the claim of the plaintiffs. On the other hand, various averments are made in the plaint contending that the 1st defendant has procured many items of the property, in terms of the MoU. The plaintiff seeks to place before the court various e-mail communications to show that the 1st defendant had sought for extension of time, by its own conduct. Therefore, unless the evidence is permitted to be placed on record, and the same is weighed, it would not be possible to conclude whether the parties mutually agreed to extend the period for completion of the contract.

11. For the reasons stated above, this Court is of the considered opinion that there is no merit in the petition. Accordingly, the Civil Revision Petition stands dismissed.

Pending IAs if any, stand disposed of.