



Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**FIRST APPEAL NO. 51 OF 2019**

M/s. Balaji Construction Company,  
Registered at Mumbai, BA-58111, Dated  
20/09/1993 under Indian Partnership Act,  
1932, Represented by their Partner, Mr.  
Hemant Radhakrishna Sapale, Carrying on  
business at Parvati Niwas, 3<sup>rd</sup> Floor, Mahant  
Road Extension, Vile Parle (East), Mumbai –  
400 057. (Registered address)

...Appellants

*V e r s u s*

1. Mrs. Lira Siraj Shaikh, w/o. Mr. siraj  
Shaikh, occupation : Housewife, residing at  
'Siraj Shaikh Bungalow', opp. Public Water  
Tank, Next to ITI Office, Altinho, Panaji, Goa  
– 403 001 and F-5, Sonali Apartments,  
Tonca, Caranzalem, Panaji, Goa.

2. Mr. Siraj Shaikh, major, occupation,  
Business, residing at 'Siraj Shaikh Bungalow',  
opp. Public Water Tank, Next to ITI Office,  
Altinho, Panaji, Goa – 403 001 and F-5,  
Sonali Apartments, Tonca, Caranzalem,  
Panaji, Goa. Carrying on business at 'Aleluia  
Menezes Building', Opp. MES Inspection  
Bungalow, Altinho, Panaji, Goa – 403 001.

3. Mrs. Maria Elvina Das Neves Ferreira  
Trindade, major, Residing at Rua Ascensao  
Gunimaraes, No. 161, resident of D.T.O.  
Loule, Portugal.

4. Mr. Humberto Jorge Candeias Castelo  
Branco Trindade, major, Residing at Rua  
Ascensao Gunimaraes, No. 161, resident of  
D.T.O. Loule, Portugal.

5. Mrs. Maria Ruth Das Neves Ferreira  
Reys, major, residing at Rua Manuel Ferreira  
De Andrade, No. 3-5 Dt. Lisboa, Portugal.

6. Mr. Lesseps Jose Antonio Lourenco Reys,

major, Residing at Rua Manuel Ferreira De Andrade, No. 3-5 Dt. Lisboa, Portugal.

7. Mrs. Maria Raquel Das Neves Ferreira Moniz Lima, major, Residing at Rua Manuel Ferreira De Andrade, No. 3-5 Dt. Lisboa, Portugal. (Deleted)

8. Shri Joao Paulo De Moura Moniz Lima, Residing at Urbanizacao Do Salgueiral, No. 103, C 4 D Guimares, Portugal. (Deleted)

7. Ms. Ana Cristina Ferreira Moniz Lima

8. Ms. Augusta Raquel Ferreira Moniz Lima, both r/o. Rui Manuel Ferreira, 17, 3A, Lindae – Villa Portugal. (Since deceased LR is Respondent no. 7.) (Amendment as per Order dated 26.04.2022.)

9. Mrs. Maria Manuela Das Neves Ferreira Medeiros, major, Residing at Rua Damiao De Gois No. 45-5, DTO Alges, Portugal.

10. Mr. Carlos Alberto Marques Laranji Medeiros, major, Residing at Rua Damiao De Gois, No. 45-5, DTO Alges, Portugal.

11. Mrs. Maria Augusta Das Neves Ferreira, major, Residing at Rua Sebastiao Saraiva Lima, No. 66-1-DTO, Lisboa, Portugal.

12. Mr. Henrique Albuquerque Lourenco Moreira, major, Residing at Rua D. Aleixo Cortereal No. 394 r/c-D Lisboa, Portugal.

13. Mr. Joao Pedro Ferreira Moreira, major, Residing at Rua D. Aleixo Cortereal No. 394 r/c- D Lisboa, Portugal.

14. Mr. Luis Filip Ferreira Moreira, major, Residing at Rua D Aleixo Cortereal No. 394 r/c- D Lisboa, Portugal.

15. Ms. Sonia Luisa Ferreira Moreira, major,

Residing at Rua D Aleixo Cortereal No. 394  
r/c- D Lisboa, Portugal.

Above Defendant nos. 3 to 15 can be Served  
through their General Power of Attorney, Mr.  
Ceasar Vaz, Advocate, 80, Rua de Saudade,  
Near Junta Quarters, Pajifond, Margao, Goa  
– 403 601.

16. Mr. Santanio Ferreira, major,  
Occupation: not known, r/o. Chalta No. 72,  
City Survey No. 133, Borda, Margao, Goa.

17. Mr. Peidade Ferreira, major,  
Occupation : not known, r/o. Chalta No. 72,  
City Survey No. 133, Borda, Margao, Goa.

18. Mrs. Ana Lucia Martinho De Souza  
Moreira, Residing at Rua Natalia Correia, No.  
10 ZD to 2690-572, Sta Iria de Azoia,  
Portugal.

19. Mr. Pascoal Ferreira, major, Occupation :  
not known, r/o. House no. 133, Borda, Post  
Fatorda, Margao, Goa – 403 601.

20. Mr. Inas Ferreira, major, Occupation:  
not known, r/o. House No. 133, Borda, Post  
Fatorda, Margao, Goa – 403 601.

21. Mrs. Cristalina Ferreira, major,  
Occupation : not known, Resident of Chalta  
No. 72 & P.T. Sheet No. 133 of City Survey  
Office, Borda, Post Fatorda, Margao, Goa –  
403 601 (Abated).

22. Mr. Custodio Ferreira, major, Occupation  
: not known, Resident of Chalta No. 72 & p.  
T. Sheet No. 133 of City Survey Office, Borda,  
Post Fatorda, Margao, Goa – 403 601  
(Abated).

23. Mrs. Joao Deniz Ferreira, major,  
Occupation : not known, Resident of Chalta  
No. 72 & P. T. Sheet No. 133 of City Survey  
Office, Borda, Post Fatorda, Margao, Goa –

403 601.

24. Mrs. Idalina Miranda, major, Occupation : not known, Resident of Chalta No. 72 & P. T. Sheet No. 133 of City Survey Office, Borda, Post Fatorda, Margao, Goa – 403 601 (Abated).

25. Mr. Salvador Ferreira, major, Occupation: not known, Resident of Chalta No. 72 & P. T. Sheet No. 133 of City Survey Office, Borda, Post Fatorda, Margao, Goa – 403 601 (Abated).

25(a). Mrs. Inacinha Furtado, Widow of late Pedro Fereira, Aged 58 years, housewife,

25(b) Mr. Costa Fereira, Son of late Pedro Fereira, Aged 34 years, service.

25(c) Mrs. Vency Vaz e Fereira, Daughter of Mariano Augusto Vaz, Aged 33 years, housewife,  
All residents of House no. 111, Borda, Margao, Salcete, Goa.

26. Mrs. Roquesinha Fereira, wife of late Mr. Francisco Ferreira, Resident of House no. 143, Borda, Post Fatorda, Margao, Goa – 403 601.

27. Mr. Rusario Fereira, son of late Mr. Filipe Ferreira, Resident of House no. 436, Borda, Post Fatorda, Margao, Goa – 403 601.

28. Mrs. Caratina Ferreira, major, Occupation: not known, Resident of Chalta No. 72 & p. T. Sheet No. 133 of City Survey Office, Borda, Post Fatorda, Margao, Goa – 403 601 (since deceased). (Amended as per Order dated 26.04.2022)

(a) Unknown LR's of Respondent no. 28.

29. Mr. Sebastiao Fereira, Son of Lawrence Ferreira, Resident of House No. 114 (old),

431 (New), Borda, Post Fatorda, Margao, Goa. 403 601.

30. Mrs. Inacio Ferreira, major, Occupation: not known, Resident of Chalta No. 72 & p. T. Sheet No. 133 of City Survey Office, Borda, Post Fatorda, Margao, Goa – 403 601.

31. Mr. Lawrence Ferreira, Resident of Chalta No. 72 & p. T. Sheet No. 133 of City Survey Office, Borda, Post Fatorda, Margao, Goa – 403 601 (Abated).

32. Smt. Lourencinha Fereira, Resident of House No. 111, Borda, Post Fatorda, Margao, Goa – 403 601.

33. Smt. Josephine Fereira, Daughter of Pedro Ferreira, Resident of House No. 111 (old), 438 (New), Borda, Post Fatorda, Margao, Goa – 403 601.

34. Mr. Rajendra Narayan Talak, Son of late Narayan Talak, Aged about 59 years, Businessman, Resident of Amaral Apartments, Margao, Goa 403 601.

...Respondents

35. Mr. Bernado Fereira, Son of late Camilo Ferreira, Aged about 54 years, Resident of H. No. 442, Ward No. 12, Borda, Margao, Salcete, Goa (Since deceased) (Amended as per Order dated 26.04.2022)

(a) Unknown LR's of Respondent No. 35.

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**Mr. Shivan Desai, Advocate** with Ms. Tahira Menezes, Ms. Riya Amonkar and Ms. Aishwarya Thorat, Advocates for the Appellants.

**Mr. Sudin Usgaonkar, Senior Advocate** with Ms. Tanisha Mashelkar, Ms. Divya Parab and Mr. Aniket Prabhu, Advocates for Respondent nos. 3 to 15 and 34.

**Ms. Seoula Vas, Advocate** for the Respondent nos. 25(a), 25(b) and 25(c).

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**CORAM: SUMAN SHYAM &  
AMIT S. JAMSANDEKAR, JJ**  
**RESERVED ON : 3<sup>rd</sup> February, 2026**  
**PRONOUNCED ON : 27<sup>th</sup> February, 2026**

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**JUDGMENT** (*Per SUMAN SHYAM, J.*)

1. This First Appeal is directed against the Judgment and Order dated 05.06.2018, passed by the learned Adhoc IInd Additional Senior Civil Judge, Margao, allowing the application filed by the Respondents-Defendants nos. 25(a) 25(b) and 25(c), under Order VII Rule 11 of the Civil Procedure Code, 1908, (CPC), rejecting the plaint filed by the Appellant-Plaintiff.
2. The facts and circumstances of the case, giving rise to the filing of the present Appeal, shorn of unnecessary details, are as here-under.
3. The defendant no.1-Respondent no.1 had initially entered into an Agreement for Sale of a plot of land dated 03.09.1990, with the Defendant-Respondent nos. 3 to 12 and Maria Luisa Das Neves Ferreira (since deceased), pertaining to property known as “*Palmar e varzea Natibata*”, admeasuring 11,920 square metres, situated at Borda, Margao, within the Municipal limits of Margao, in the District of South Goa, in the State of Goa. Late Maria Luisa Das Neves

Ferreira died on 15.02.1991 leaving behind the Defendant nos. 12 to 15 as legal heirs and representatives. The Appellant-Plaintiff, as an unregistered Partnership Firm, had entered into an Agreement dated 02.02.1991 with the Defendant-Respondent no.1, with the Defendant-Respondent no.2 as confirming party, to buy the suit property. Prior to that, the un-registered firm of Appellant-Plaintiff had also entered into a Memorandum of Understanding dated 26.12.1990 with the Defendant-Respondent no.1 pertaining to the suit property. Accordingly, Maria Luisa Das Neves Ferreira had executed a General Power of Attorney dated 04.04.1990 in favour of the Defendant-Respondent nos. 1 and 2. Under the MoU dated 02.02.1991, it was agreed that on payment of a sum of ₹4,00,000/- by the Appellant firm, the Defendant-Respondent no.1 would assign all her rights in respect of the suit property in favour of the Appellant. Accordingly, the Appellant had paid a sum of Rs.1,00,000/- in favour of the Defendant-Respondent no.1. It was also agreed by and between the parties that a Tripartite Agreement would be signed between the Appellant, the Respondent no.1 and the original owners of the land, following which, the Appellant will make payment of the entire amount to the original owners.

4. As noted above, on 04.04.1990, a General Power of Attorney was executed by late Maria Luisa Das Neves Ferreira in favour of Defendant-Respondent nos. 1 and 2. However, there was no

compliance of the Agreement of Sale dated 03.09.1990. As such, on 21.04.1993 and then on 14.08.1993, legal notices were sent by the Appellant-firm, to the Defendant-Respondent nos. 1 to 16 demanding performance of the Agreements dated 03.09.1990 as well as 02.02.1991, failing which, appropriate legal proceedings would be instituted against them. It would be significant to note herein that at the relevant point of time, the Appellant-firm was an unregistered Partnership Firm. It was only on 19.08.1993, that the Appellant Firm had made an application for registration of the Partnership Firm in the name and style of '*Balaji Constructions Company*'. On 27.08.1993, one of the partners of the firm viz. Shri Ajit Pangam had retired. Thereafter, on 30.08.1993, the Appellant-Firm, as an unregistered Partnership Firm, had instituted suit bearing no. Special Civil Suit No. 246/1993/A against the Defendant-Respondent nos. 1 to 31 *inter alia* seeking a Decree for specific performance of Agreement of Sale dated 03.09.1990 as well as the MoU dated 02-02-26.12.1990.

5. Taking note of the fact that the Plaintiff was an unregistered Partnership Firm, by the Judgment and Order dated 10.06.1999, the learned Civil Court had dismissed the suit being Special Civil Suit No. 246/1993/A as not maintainable in the eyes of law in view of the specific provisions of Section 69(2) of the Indian Partnership Act, 1932.

6. Assailing the Judgment and Decree of dismissal dated 10.06.1999, the Appellant had preferred First Appeal No. 93 of 1999 before this Court which was also dismissed by the Judgment and Order dated 20.09.2005.

7. The Judgment and Order dated 20.09.2005 was assailed by the Appellant before the Hon'ble Supreme Court in SLP No. 7605/2006. By the Order dated 05.10.2012, the Supreme Court had dismissed the SLP. However, the questions of law were kept open to be decided in an appropriate proceeding. The operative part of the order dated 05.10.2012 is re-produced here-in below :-

“ Heard learned Counsel for the petitioners and perused the relevant material.

Delay condoned.

We do not find any legal and valid ground for interference. The special leave petition is dismissed. However, the question of law is left open to be decided in an appropriate case.”

8. In the meantime, the Appellant had obtained registration of the Partnership Firm on 20.09.1993. As such, after the dismissal of the SLP, the Appellant, as a registered Partnership Firm, had filed Civil Suit bearing Special Civil Suit No. 54/2012/II in the Court of Civil Judge, Senior Division at Margao seeking the following reliefs :

“The Plaintiffs, therefore, prays that:

a) The Defendant Nos. 1 to 15 may be decreed and ordered to specifically perform the sale agreement dated 03.09.1990

and 02.02.1991 by obtaining N.A. permission NOC for sale and approval of plans as also the requisites R.B.I permission for the transfer of the suit property and preparing and executing the indenture of conveyance in favour of the Plaintiffs of the suit property and/or to execute Tripartite Agreement between the Defendant Nos. 1 to 15 on the one hand and the Plaintiffs on the other hand.

b) The Defendants Nos. 16 and 17 may be permanently restrained by the decree and order of this Hon'ble Court from encroaching upon or trespassing on the area of the suit property which is currently in the possession of Defendant Nos. 3 to 15 or from parting with possession thereof or from creating any third party interest therein.

c) The Defendant Nos. 1 to 15 may be restrained from parting with possession thereof or from creating any third party interest therein and inducting any third party therein or from creating any charges mortgage or encumbrances by passing an order of prohibitory injunction.

d) In the alternative and without prejudice to the foregoing prayer of specific performance, the Defendant Nos. 1 to 15, may be decreed and ordered to pay to the Plaintiffs a sum of Rs.16,68,80,000/- (Rupees Sixteen Crores Sixty Eight Lakhs and Eighty Thousand only) in the aggregate as and by way of damages sustained by the Plaintiffs which is inclusive of :

i) Refund of earnest money / part payment of purchase price amounting to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only)

ii) A sum of Rs.3,80,000/- as the brokerage payable by the Plaintiffs.

iii) A sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) being the 10% profits in the building project proposed

to be undertaken on the site of suit property and;

iv) A sum of Rs.2,40,00,000/- (Rupees Two Crores Forty Lakhs only) being the difference in the market price at the minimum rate of Rs.2,000/- per square metre.

e) Pending the hearing and final disposal of the suit the Court Receiver preferably the Plaintiff may be the appointed as the Receiver to take charge of the suit property under Order 40 rule 1 of the C.P.C.

f) Such further and other reliefs as the nature and circumstances of the case may require.

g) Costs of the suit.

h) Declare that the purchase orders passed in mundkar purchase proceedings Mam/Mund/Pur/34/2003 dated 13/07/2006, Mam/Mund/Pur/42/2003 dated 07/06/2007, Mam/Mund/Pur/41/2003 dated 07/06/2007, Mam/Mund/Pur/48/2007 dated 10/01/2009, JM-II/Mund/Pur/6/2007 dated 24/02/2009, JM-II/Mund/Pur/9/2007 dated 24/02/2009 and JM-II/Mund/Pur/7/2007 dated 24/02/2009 are nonest and not binding on the plaintiff.

i) Restrain Defendants 16 to 32 from in any way extending their existing houses and from in any way interfering with the property except to the extent of residing until evicted by the due process of law.”

**9.** The cause of action for filing this suit, according to the Plaintiff, arose on several dates including 05.10.2012, as mentioned in paragraph 18 of the plaint which is re-produced herein below for ready reference :-

“18. The cause of action for this suit arose first in May 1993, and again in August 1993, when the notice period in notice dated 21.04.1993 and 14.08.1993 expired and further on 05.10.2010 by the Order dated 05.10.2012 in SLP (Civil) No. 7605 of 2006.”

10. It is in this factual backdrop that the learned Additional Civil Judge, Senior Division at Margao had rejected the plaint filed in the Special Civil Suit no. 54/2012/II by the impugned Order dated 05.06.2018, by holding that the suit was barred by limitation. The Order dated 05.06.2018 is under challenge in the present Appeal.

11. Mr. S.Desai, learned Counsel for the Appellant, has strenuously argued that notwithstanding the previous suit, which was instituted by an unregistered Partnership Firm, the present suit would be maintainable in law since it was instituted by a registered Partnership Firm. Contending that the Appellant Firm having pursued the Appeal as well as the SLP before the Hon'ble Supreme Court and the SLP having been closed by Order dated 05.10.2012 passed in SLP(C) no. 7605/2006, the Order of the Supreme Court had given rise to a fresh cause of action for the Plaintiff to prefer the instant suit. Therefore, the plaint could not have been rejected by the learned Court below by holding the suit to be barred by Limitation.

12. By referring to the Judgment of the Supreme Court rendered in the case of ***Indian Evangelical Lutheran Church Trust***

***Association vs. Sri Bala & Co<sup>1</sup>***, Mr. Desai has further argued that since the earlier suit was rejected on a technical ground of non-compliance of Section 69(2) of the Indian Partnership Act and without going into the merit of the matter, hence, it must be held that until such time, the SLP was disposed of by Order dated 05.10.2012, time had stopped running in respect of the cause for the purpose of limitation. It was only after the dismissal of the SLP that '*time has begun to run*' since the subsequent suit being Special Civil Suit no. 54/2012 was instituted within a period of three years from the date of accrual of cause of action. Hence, he submits that by deducting the time consumed in the earlier Civil Suit and the Appeal as well as the SLP for computing the period of limitation, the present suit was within the period of limitation. Therefore, the learned Trial Court has committed manifest error in holding that the suit filed by the Appellant was barred under the law of limitation.

13. Mr. Usgaonkar, learned Senior Counsel appearing for the Respondent-Defendant nos. 3 to 15 and 34, on the other hand, has defended the Order dated 05.06.2018, by contending that the subsequent suit filed by the same party and on the same cause of action, was not only barred by the law of limitation, but the same was also hit by the principles of *resjudicata*. Contending that the prayer for interim relief has been successively denied/rejected by the

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different Courts including the Hon'ble Supreme Court of India, it is submitted that, the land in question had been transferred by the original owners in favour of his clients. Upon construction of residential flats on the said land, the flats have also been sold to individual purchasers. Therefore, even on merits, no relief can be granted to the Appellant-Plaintiff in the absence of the original purchasers being made parties to the proceeding.

**14.** We have considered the submissions made at the bar and have also gone through the materials available on record. At the very outset, it would be pertinent to mention herein that while preferring the present appeal, the Appellant had made a prayer for interim relief before this Court, which was declined by order dated 21.01.2025. Aggrieved thereby, the Appellant had preferred Special Leave to Appeal(Civil) No(s). 6378 of 2025 before the Hon'ble Supreme Court, which was disposed of by Order dated 07.03.2025, by refusing any relief to the Appellant. However, a request was made to this Court to give priority to the hearing of this Appeal so as to avoid multiplicity of further proceedings. Accordingly, hearing of this Appeal has been expedited.

**15.** A careful reading of the impugned Order dated 05.06.2018 goes to show that although the Respondents-Defendants nos. 25(a), (b) and (c) in their application under Order VII Rule 11 of CPC, had taken the plea of *resjudicata*, the learned Court below did not accept

such a plea. However, it was observed by the learned Civil Judge that by failing to produce a copy of the plaint filed in the earlier suit being Special Civil Suit No. 246/1993/A and by failing to indicate the nature of pleadings therein so as to meet the plea of limitation, the Appellant had deliberately concealed material facts so as to avail the benefit of extension of limitation. Observing that the Appellant-Plaintiff, by clever drafting of plaint, has sought to overcome the bar of limitation in instituting the subsequent suit, the learned Trial Court has held that merely by reading the plaint, it was apparent that the Plaintiff's suit was barred by limitation. On such finding, the plaint was rejected.

**16.** From the reading of the plaint filed by the Appellant in Special Civil Suit no. 54/2012/II, we do not find any justifiable ground to disagree with the findings of the learned Court below. We say so because of the fact that a bare reading of the averments made in paragraph 18 of the plaint, as quoted above, goes to show that the cause of action of the suit, for all practical purposes had arisen way back in the year 1993. However, with the sole objective of overcoming the bar of limitation, the Appellant has mentioned 05.10.2010 as one of the date of accrual of cause of action for filing the suit. However, the fact remains that on 05.10.2010, the SLP filed by the Appellant was dismissed by the Apex Court and therefore, the said order cannot be said to have given rise to a fresh cause of action

for the plaintiff to file the subsequent the suit. Since the primary relief prayed for in the suit was for specific performance of the Agreement for Sale dated 03.09.1990 and the second legal notices for performance of the Agreement for sale having been issued on 14.08.1993, the period of limitation applicable therein, as per Article 54 of the Limitation Act, would at best be three years from the date on which the other party had declined to honour the Agreement as per the contract. From a plain reading of the plaint there can be no manner of doubt about the fact that in this case, the cause of action for filing the suit arose way back in the year 1993 or at best in the year 1996 reckoned from the date of the Legal Notice dated 14.08.1993. That is the reason why the first Suit was instituted by the Plaintiff, as an un-registered partnership firm, on 30.08.1993 due to non-performance of the Agreement for Sale dated 03.09.1990.

17. After the registration of the Partnership Firm on 20.09.1993 and in view of the specific objection of the defendants regarding maintainability of the suit due to non-compliance of section 69(2) of the Partnership Act, the Appellant - plaintiff had the option to amend the Plaint filed in the first suit so as to incorporate such fact or to institute a fresh suit within the period of limitation but it had failed to do so without any just cause. As such, the Limitation under Article 54 of the Limitations Act, 1963 had evidently expired in the year 1996. Such bar of law of limitation is being sought to be overcome by the

Appellant-Plaintiff by seeking refuge under the order dated 05.10.2012 passed by the Hon'ble Supreme Court.

18. As has been indicated herein above, by the Order dated 05.10.2012, the Hon'ble Supreme Court had merely left the legal issues open to be decided in an appropriate proceeding. Such observations of the Hon'ble Supreme Court, in our considered opinion, cannot be extended to mean that liberty was granted to the same party to re-agitate the matter once again in a subsequent suit nor did the order dated 05.10.2012 give rise to any fresh cause of action for filing the subsequent suit.

19. Order VII Rule 11 of the CPC, reads as follows :-

**“Order VII Rule 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 provisions 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 from 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.]

20. It is also pertinent to mention herein that Order VII Rule 13 of the CPC permits the Plaintiff to re-agitate the same cause of action after rejection of plaint. Order VII Rule 13 is re-produced herein below for ready reference :-

**“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.

21. From a conjoint reading of Rules 11 and 13 of Order VII, it is apparent that a plaint can be rejected in any of the grounds mentioned in clauses (a) to (d) of Rule 11 of Order VII, which also includes the ground where the suit appears to be barred by any law. The expression ‘any law’ would undoubtedly mean and include the law of limitations as well. Therefore, if it appears from the plain reading of the plaint that the suit is barred by law of limitation, the court would be duty bound to reject the plaint.

22. It is no doubt correct that notwithstanding the rejection of the

plaint under Order VII Rule 11 of CPC, the Plaintiff can re-institute the suit on the same cause of action. However, in such a case, the subsequent suit will have to be instituted within the period of limitation.

**23.** It will be significant to note herein that Special Civil Suit No. 246/1993/A was instituted by the Plaintiff as an unregistered Partnership Firm. Therefore, in view of Section 69(2) of the Partnership Act, the suit was dismissed. The subsequent suit is , however, by a registered Partnership Firm. Although the name of the Firm is the same and to some extent, the composition of the partnership firm is also similar to the original firm, yet , it must be borne in mind that the Plaintiff in the present suit is a different entity as compared to the Plaintiff in Special Civil Suit No. 246/1993/A ( previous suit). The Plaintiff in Special Civil Suit No. 246/1993/A was an un-registered firm and hence, was not competent to institute the suit. However, the present Appellant-Plaintiff, after its registration, had acquired the competence to institute the suit for enforcing the right of the Partnership Firm by instituting legal proceeding. Therefore, it cannot be ignored that the Plaintiffs in both the suits, at least for the purpose of maintaining the civil action against the defendants, are two different entities. Viewed from that angle, the applicability of the law of Limitation to the present suit has to be assessed on an independent evaluation of the averments made

in the plaint *dehors* any reference to the plaint filed in the previous suit. It is perhaps for such reason there is neither any pleadings relating to the particulars of the plaint filed in the previous suit nor has the plaint been brought on record by the Appellant. Be that as it may, from a reading of the plaint filed in Special Civil Suit no. 54/2012/II and the relief prayed for therein, we are of the un-hesitant opinion that the suit is clearly barred under the law of Limitation. Having regard to the facts of the case, even Order VII Rule 13 of the CPC would not save the Plaintiff's suit.

24. Mr. Desai, learned Counsel appearing for the Appellant, has placed heavy reliance on the Judgment of the Hon'ble Supreme Court in **Indian Evangelical Lutheran Church Trust Association** (supra), to submit that after the decision in the SLP vide Order dated 05.10.2012, it was open for his client to re-institute the suit and, therefore, the law of limitation could not operate in the matter.

25. In **Indian Evangelical Lutheran Church Trust Association** (supra), that was a case where the suit filed by the plaintiff in the year 1993 for specific performance of Agreement for Sale dated 26.04.1991, was brought to an end by Order dated 12.01.1998 due to non-payment of requisite Court fees by the plaintiff. Thereafter, the plaintiff had filed O.S. No.49/2007 before the Court of the Principal District Judge, Dindigul District, seeking

specific performance of the same sale agreement dated 26.04.1991. The defendant sought rejection of the plaint filed in the second suit by invoking Order VII Rule 11(d) of the CPC on the ground that the subsequent suit is barred by the principles of *resjudicata*. The said application was rejected by the learned Trial Court on the ground that the previous suit was not decided on merit and therefore, *resjudicata* would not apply to the subsequent suit. Even the Revision Petition filed by the defendant was rejected by the High Court. Aggrieved thereby, the defendant had approached the Hon'ble Supreme Court by filing the SLP. After discussing the various legal issues involved in the matter and upon due consideration of the mandates of Article 54 and Article 113 of the Limitation Act, the Hon'ble Supreme Court came to the conclusion that the second Suit being OS No.49/2007 was barred by law of limitation. It was observed that not to speak of Article 54 even Article 113 of the Limitation Act would not save the plaintiff's suit.

The observations made in paragraphs 9.11 and 9.12 of the said decision would be relevant for the purpose of this case and, therefore, are being re-produced herein below for ready reference :-

“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, para 1*]. 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 [**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.”

26. In view of the above observations, we are of the opinion that the

decision in the case of *Indian Evangelical Lutheran Church Trust Association* (supra) would not be of any assistance to the Appellant.

27. For the reasons stated above, the appeal is held to be devoid of any merit. The same is accordingly, dismissed .

28. There would be no order as to cost.

**AMIT S. JAMSANDEKAR, J.**

**SUMAN SHYAM, J.**