Smt Razia Begum Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Sep-09-2014

Judge : Gita Mittal

Appellant : Smt Razia Begum

Respondent : Delhi Development Authority and ors.

Judgement :

$~9 *IN THE HIGH COURT OF DELHI AT NEW DELHI RFA(OS) 2/2014 & CM No.137/2014 Reserved on :

20. h August, 2014 Date of Decision:

9. h September, 2014 SMT RAZIA BEGUM Through : ....Appellant Mr. S.D. Ansari, Adv. VERSUS DELHI DEVELOPMENT AUTHORITY & ORS. ....Respondents Through: Mr. Kush Sharma and Mr. Shipra Shukla, Advs. for R-1. Mr. Sanjay Poddar, Sr. Adv. with Mr. Govind Kumar and Mr. Anshuman Nayak, Advs. for R-4. CORAM: HON'BLE MS. JUSTICE GITA MITTAL HONBLE MR. JUSTICE SUNIL GAUR GITA MITTAL, J1 The instant appeal lays a challenge to a judgment dated 11 th October, 2013 whereby the learned Single Judge has accepted the respondents prayer for rejection of the plaint of the appellant under Order VII Rule 11 of the Code of Civil Procedure, and dismissed the suit of the appellant. RFA(OS)No.2/2014 1 2. The plaintiff had filed the suit which was registered as CS(OS)No.509/2011 seeking the following prayers: i) that a decree

of declaration with costs may very kindly be passed in favour of the plaintiff and the defendants declaring that the letter dated 20.03.1993 refer 126 (47) 88/SSS/VK-III dated 20.03.1993 by which the possession of flat No.4115, C-4, FF, Vasant Kunj, New Delhi aforesaid was handed over by the defendant no.1 to the defendant no.2 and subsequent documents issued/executed thereafter, as illegal, improper, ineffective, malafide and null and void; ii) that a decree of possession be passed in favour of the plaintiff and against the defendants ordering them to hand over the physical possession of the flat No.4115, C-4, FF, Vasant Kunj, New Delhi to the plaintiff; iii) that a decree of permanent injunction may very kindly be passed in favour of the plaintiff and against the defendants thereby they be restrained from creating third party interest in the aforesaid flat No.4115, C-4, FF, Vasant Kun, New Delhi. 3. The defendants were served in the suit. However, only defendant no.4 appears to have contested the same on the 4 th of March, 2011. The defendant no.2 had transferred his rights in the suit property to the defendant no.3 who, in turn transferred them to defendant no.4. Thus only the defendant no.4 was effected by the outcome of the suit. RFA(OS)No.2/2014 2 4. Placing reliance on the provisions of the Limitation Act, the respondent No.4 Manav Aggarwal (defendant no.4 before the learned Single Judge) filed I.A.No.5642/2011 under Order VII Rule 11 of the Code of Civil Procedure seeking dismissal of the plaint on the ground that it was barred by law. It was contended that the plaintiff has sought a declaration with regard to documents which were executed more than 15 to 16 years prior to filing of the suit and hence the prayer with regard thereto were hopelessly barred by limitation. Possession of the flat also stood handed over to the defendants in 1993 to the contemporaneous and admitted knowledge of the plaintiff. Therefore, the relief with regard thereto over eighteen years later in 2011 was also barred under the Limitation Act.

5. Notice was issued of I.A.No.5642/2011 to the appellant by the order dated 18th of April, 2011. Despite opportunities, no reply was filed to this application.

6. After hearing detailed arguments on the application, by the judgment dated 11th October, 2013, the court accepted the prayer made in the application seeking rejection of the plaint of the appellant under Order VII RFA(OS)No.2/2014 3 Rule 11 (d) of the Code of Civil Procedure on the ground that the suit claim was barred

by limitation and therefore, the suit was barred by law. This judgement has been assailed before us by the appellant by way of the present appeal. Statutory provisions 7. We may examine the provision of the Code of Civil Procedure which concern the present adjudication. Order VII Rule 11 (d) of the CPC 11. Rejection of plaint.-. The plaint shall be rejected in the following cases:- (a) to (c) xxx xxx xxx (d) where the suit appears from the statement in the plaint to be barred by any law; xxx 8. xxx xxx We may for the purposes of convenience set also down the relevant provisions of the Limitation Act as well. A perusal of the above prayer shows that the appellant had sought a decree of declaration which relief is governed by Entry 58 of Schedule 1 of the Limitation Act which reads as follows: Description of suit Period RFA(OS)No.2/2014 of Time from 4 limitation which period begins to run 58. To obtain any Three years When the right other declaration to sue first accrues.

9. By way of the prayer at Serial No.(ii), the appellant has prayed for decree for possession which is governed by Entries 64 and 65 of Schedule 1 of the Limitation Act which reads as follows: Description of suit Period of Time from limitation which period begins to run 64. For possession of Twelve years immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.

65. For possession of Twelve years immovable property or any interest therein based on title. RFA(OS)No.2/2014 The date of dispossession. When the possession of the defendant becomes adverse to the plaintiff. 5 10. The respondents have contended that the appellant has not made any prayer for cancellation or setting aside of instruments executed in their favour. Entry 59 of Schedule 1 of the Limitation Act which provides for the limitation thereof also requires to be set down and reads as follows: Description of suit Period of Time from which limitation period begins to run 58. To cancel or set Three years aside an instrument or decree or for the rescission of a contract 11. When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. We may extract here the relevant portion of Section 3 of the Limitation Act which reads as follows:

3. Bar of limitation.- (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. tc" 3. Bar of limitation.-(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. RFA(OS)No.2/2014 6 (2) For the purposes of this Act (a) a suit is instituted (i) in an ordinary case, when the plaint is presented to the proper officer; xxx xxx xxx Scope of Order VII Rule 11 of the CPC12 Respondent no.4 brought I.A.No.5642/2011 under the provision of Order VII Rule 11 of the CPC pressing the ground contained in sub-rule (d) that the suit was barred by law and therefore, plaint was liable to be rejected. What is the nature of the inquiry which has to be undertaken by the court while considering such an application?.

13. On this aspect in the judgment of the Supreme Court reported at 2007 (5) SCC614: (2007 (7) SCALE348 Hardesh Ores Pvt. Ltd v. M/s Hede and Company, it was held as follows: 25. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of Clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be RFA(OS)No.2/2014 7 found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of Clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in Liverpool and London S.P. and I Association Ltd. v. M.V. Sea Success I

and Anr. : (2004)9SCC512 and Popat and Kotecha Property v. State Bank of India Staff Association : (2005)7SCC510 .

26. We shall therefore proceed on the basis of averments contained in the plaint and the documents annexed to it. xxx xxx xxx 33. The respondent sought rejection of the plaint by filing application under Order VII Rule 11 CPC contending that the suit was barred by limitation on the face of it. It was contended before the High Court as also before us that the plaint has been cleverly drafted to give it the appearance of a simple suit for injunction to enforce the terms of Clauses 15 and 20 of the agreement which incorporated negative covenants prohibiting mining operation by anyone else except the appellant- Hardesh, or without its permission. It was submitted before us that the law is well settled that the dexterity of the draftsman whereby the real cause of action is camouflaged in a plaint cleverly drafted cannot defeat the right of the defendant to get the suit dismissed on the ground of limitation if on the facts, as stated in the plaint, the suit is shown to be barred by limitation. RFA(OS)No.2/2014 8 xxx xxx xxx 39. We are of the view that the respondent is right in contending that enforcement of the negative covenants presupposes the existence of a subsisting agreement. As noticed earlier, the law is well settled that the renewal of an agreement or lease requires execution of a document in accordance with law evidencing the renewal. The grant of renewal is also a fresh grant. In the instant case, the appellant-plaintiff did exercise their option and claimed renewal. The respondents denied their right to claim renewal in express terms and also unequivocally stated that the agreement did not stand renewed as contended by the appellants. Having regard to these facts it must be held that a cause of action accrued to the appellant- plaintiff when their right of renewal was denied by the respondents. This happened in December, 2001 and, therefore, within three years from that date they ought to have taken appropriate proceedings to get their right of renewal declared and enforced by a court of law and/or to get a declaration that the agreement stood renewed for a further period of 5 years upon the appellants' exercising their option to claim renewal under the original agreement. The appellants-plaintiffs have failed to do so. However, the plaint proceeds on the assumption that the original agreement stood renewed including the negative covenants contained in Clauses 15 and 20 of the original agreement which authorised only the appellants to extract ore from the mine with

an obligation cast on the respondents-defendants not to interfere with the enjoyment of their rights under the agreement. In the facts of this case, in the suit prayer for injunction based on negative covenants could not be asked for unless it was first established that the agreement continued to subsist. The use of the words "During the subsistence of this agreement" in Clause 15, and "during the pendency of this indenture" in Clause 20 of the agreement is significant. In the absence of a document renewing the original agreement for a further period of 5 years and in the absence of any declaration from a court of law that the original agreement stood renewed automatically upon the appellants exercising their option for grant of renewal, as is the case of the appellants, they cannot be granted relief of injunction, as prayed for in the suit, for the simple reason that RFA(OS)No.2/2014 9 there is no subsisting agreement evidenced by a written document or declared by a Court. If there is no such agreement, there is no question of enforcing Clauses 15 and 20 thereof. The appellants ought to have prayed for a declaration that their agreement stood renewed automatically on exercise of option for renewal and only on that basis they could have sought an injunction restraining the respondents from interfering with their possession and operation. Having not done so, they cannot be permitted to camouflage the real issue and claim an order of injunction without establishing the subsistence of a valid agreement. In the instant suit as well they could have sought a declaration that the agreement stood renewed automatically but such a claim would have been barred by limitation since more than 3 years had elapsed after a categoric denial of their right claiming renewal or automatic renewal by the respondents-defendants. (Emphasis supplied) 14. In this regard, in the judgment reported at 159 (2009) DLT470Tilak Raj Bhagat v. Ranjit Kaur, this court in para 6 held as follows: 6. It may be worthwhile to mention here that while considering an application under Order VII Rule 11 CPC, the Court has to look at the averments made in the plaint by taking the same as correct on its face value as also the documents filed in support thereof. Neither defence of the defendant nor averments made in the application have to be given any weightage. Plaint has to be read as a whole together with the documents filed by the plaintiff. (Underlining by us) RFA(OS)No.2/2014 10 15. Mr. Sanjay Poddar, learned Senior Counsel has drawn our attention to the pronouncement of this court reported at 151 (2008)

DLT463M.R. Kirshnamurthi v. Chandan Ramamurthi & Ors. Reliance is also placed on the judgment reported 2012 (5) AD (Del) 186 Tilak Raj Bhagat v. Ranjit Kaur which was sustained by the Division Bench of this court by the decision dated 20th July, 2012 in RFA (OS)No.65/2012 in T.R. Bhagat v. Ranjit Kaur. In these judgments also it has been held while considering an application under Order VII Rule 11 of the CPC, the court has to look only on the averments made in the plaint taking the same to be correct on face value also documents filed in support thereof.

16. We find that the learned Single Judge has noted that the judgment of the Division Bench of this court reported at 198 (2013) DLT432Indian City Properties Ltd. v. Vimla Singh and 88 (2000) DLT769Inspiration Clothes & U vs. Collby International Ltd. which are also to the same effect.

17. So far as pronouncement of the Supreme Court in (2012) 8 SCC701Bhau Ram v. Janak Singh and Ors. relied upon by Mr. Ansari is concerned, it reiterates the well settled principles that pleas taken by the defendant in the RFA(OS)No.2/2014 11 written statement is not relevant and only the plaint can be looked into while deciding the application for its rejection. In the case in hand, the learned Single Judge has not examined the case in defence at all.

18. For the purpose of considering the application under Order VII Rule 11 of the Code of Civil Procedure, the court has to confine its consideration to the plaint as laid by the plaintiff together with the documents filed and relied upon by the plaintiff. The court has to proceed on demurer taking the plaint as well as the documents filed along with the plaint in support of the plaint as correct. Therefore, for the purpose of present consideration, we have restricted our examination only to the plaint filed by the appellant along with the documents filed by the plaintiff. Manner of Examination of the plaint 19. The manner in which a court would scrutinise the plaint and documents filed along with for the purposes of an objection under Order VII Rule 11 of the CPC is also well settled. The Supreme Court has held that while considering the application under Order VII Rule 11 of the CPC, a court shall not pick out submissions in isolation but has to conduct a meaningful reading RFA(OS)No.2/2014 12 of the plaint. In this regard, reference

may be made to (1977) 4 SCC467T. Arivandandam v. T.V. Satyapal & Anr. wherein it was held that: 5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful -- not formal -reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation cam be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi It is dangerous to be too good. 20. In the pronouncement of the Supreme Court reported at 2005 (7) SCC510Popat and Kotecha Property v. State Bank of India Staff Association relied upon by the appellant, placing reliance on the judicial precedents on the parameters of court consideration of an application under Order VII Rule 11 of the CPC, it was noted that clause (d) of Order VII Rule 11 speaks of the RFA(OS)No.2/2014 13 suit as appears from the statement in the plaint to be barred by law and that disputed questions cannot be decided at the time of considering an application under order VII Rule 11 (d) of the CPC. This provision would apply where the statement made by the plaintiff in the plaint without any doubt or dispute shows that the suit is barred by any law inforce. The Supreme court elaborated on the spectrum of Order VII Rule 11 of CPC noting in paras 14 to 18 as follows:

14. In Saleem Bhai and Ors. v. State of Maharashtra and Ors. [2002]. SUPP5SCR491it was held with reference to Order VII Rule 11 of the Code 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 - 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 the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and Ors. AIR 1998 SC634it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

16. The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in RFA(OS)No.2/2014 14 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. (See T. Arivandandam v. T.V. Satyapal and Anr. [1978]. 1SCR74217. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v.Nachhattar Singh Gill (1982) 3 SCC487 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.

18. In Raptakos Brett & Co. Ltd. v. Ganesh Property AIR 1998 SC3085 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 of Order VII was applicable. 21. The manner in which the court would examine the plaint was laid down in para 19 in the following terms: 19. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in

isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no RFA(OS)No.2/2014 15 pedantic approach should be adopted to defeat justice on hairsplitting technicalities. 22. While dwelling on the requirement of essential pleadings, in para 21 of Popat and Kotecha Property (Supra), the court elucidate the requirement of Order VI Rule 2(1) in the following terms: 21. Order VI Rule 2(1) of the Code states the basic and cardinal rule of pleadings and declares that the pleading has to state material facts and not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. 23. The Supreme Court also pointed out the distinction between a material fact and particulars thus: 22. There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J.

in Bruce v. Odhams Press Ltd. (1936) 1 KB697 24. So far as mandate of Rule 11 of Order VII of the CPC is concerned, in the pronouncement reported in (2004) 3 SCC137Sopan Sukhdeo Sable & Ors. v. Assistant Charity Commissioner & Ors., the Supreme Court RFA(OS)No.2/2014 16 authoritatively laid down the duty of the court in para 20. The relevant extract whereof reads as follows: 20. ...Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even

without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13. (Emphasis supplied) 25. In 2005 (7) SCC510Popat and Kotecha Property v. State Bank of India Staff Assocaition, the Supreme Court had found that the plaintiff had laid series of claims which aspect had not been considered by the court while rejecting the plaint. It is not so in the case in hand. It is therefore, trite that if the court concludes that the suit claims are barred by law, it has no option but to proceed to reject the plaint in accordance with the provision of Order VII Rule 11 (d) of the CPC. RFA(OS)No.2/2014 17 26. We have heard Mr. Ansari, learned counsel for the appellant and Mr. Sanjay Poddar, learned Senior Counsel for the respondent no.4 at length. Learned counsels on both sides have taken us through the plaint and the documents filed along with as well as the impugned judgment dated 11 th October, 2013. Factual narration as per the plaint and plaintiffs documents 27. Learned counsel for the appellant as well as the learned Senior Counsel for respondent no.4 has very carefully taken us through the averments made in the plaint as well as the documents filed by the plaintiff on record.

28. We may briefly summarise the narration of facts as contained in the plaint and the plaintiffs documents: (i) On 10th of June, 1982, the appellant registered in the Self - Financing Housing Registration Scheme floated by the respondent no.1/defendant no.1 Delhi Development Authority (DDA for brevity) and deposited an amount of Rs.15,000/- with her application no.50231. The DDA conducted a draw of lots on the 31st December, 1987 in which the appellant was declared as the successful applicant for allotment of a flat in category III Block C, Pocket IV (First Floor) at Vasant Kunj, Delhi. A demand-cum-allotment letter for RFA(OS)No.2/2014 18 payment of instalments to her was sent by the DDA respondent no.1. The plaintiff claims that she paid four instalments, first of Rs.83,025/- on 15th of January, 1988; the second of Rs.66,120/- on 15th of July, 1988; the third of Rs.83,025 on 15th of January, 1989 and the fourth of Rs.66,420/- on the 15th of July, 1989. (ii) In the plaint the appellant claims that she lost her original papers relating to the said flat and lodged a police complaint dated 17th January 1990 with the PS Jama Masjid. She followed up with the DDA with a request for issuance of the fifth demand-cum-allotment letter. (iii) In a draw of lots

held on 5th of March, 1991, the appellant was allotted an actual flat bearing no.C-IV/4115, Vasant Kunj, New Delhi. However, the appellant did not receive the demand letter for the 5th and final instalment. (iv) So far as the private respondents are concerned, the appellant has contended that one Mr. Ajit Singh Thandi (defendant no.2 in the plaint) was a close friend having cordial relations with the appellants husband. In the month of February, 1990 when her husband was out of station, the appellant was in need of money and requested Mr. Thandi respondent no.2 for a loan of Rs.1,50,000/-, which amount he had given to her. The appellant has further RFA(OS)No.2/2014 19 pleaded in the plaint that she told Mr. Thandi that officials of the DDA had been harassing her and not handing over the possession of the allotted flat to her. Mr. Thandi assured that he would get the flat transferred in her name and suggested that she should execute an attorney in his favour as she is pardanashin lady who would not go into the open. As Mr. Thandi had good relations with the husband and good contacts, the appellant believed that he would do the needful and she executed a General Power of Attorney and agreement to sell in his favour.

29. The appellant has placed copy of deed of revocation of General Power of Attorney dated 26th June, 1993 on record which refers to the execution and details of the attorney registered with the authorities. It is noteworthy that this power of attorney was executed at a stage when no firm allotment had been made by the DDA. In fact draw of lots was conducted by the DDA on 5 th of March, 1991 in which flat number was actually allotted in the name of the plaintiff.

30. We now note some of the averments made by the plaintiff with regard to execution of the documents filed by the appellant as well as the submissions with regard to her knowledge of the manner in which the private RFA(OS)No.2/2014 20 defendants proceeded in the matter. In paras 9 and 10 of the plaint, the plaintiff avers as follows: 9. ...Under these circumstances, the plaintiff agreed to execute attorney in favour of the defendant no.2 and she did so. After some time, the husband of the plaintiff came back to Delhi and the plaintiff narrated the entire happening to him. The husband of the plaintiff did not give any comments and after lapse of some period, the husband of the plaintiff got suspicious as no communication was received from DDA and later on came to know that the said

defendant no.2 has played a fraud and got executed the other documents also in favour to usurp the said flat of the plaintiff and further defendant no.2 in connivance with the officials of the defendant no.1 got issued the Demand Letter of fifth and final settlement at his residential address and also got issued the possession letter in his name at the abovesaid address.

10. That when the fraud played by the defendant no.2 came to light, the plaintiff got cancelled the said Deed of Attorney which along with other documents were got signed fraudulently in the absence of the plaintiffs husband by playing fraud. (Emphasis by us) 31. The above extract shows that plaint conceals all material date and is replete with concealment and bears out her malafide intention to make out a semblance of a case against the private defendants. These vague averments when read alongside the documents filed by the plaintiff on record reveal the unfolding of the events. On the 18th of June, 1993, the appellant received a RFA(OS)No.2/2014 21 cheque in the sum of Rs.365.70 from the Delhi Development Authority of the same being excess payment made by her towards the flat.

32. So far as alleged revocation of the attorney is concerned, it appears that on 26th of June, 1993, the appellant executed a Deed of Revocation of General Power of Attorney. There is an unequivocal admission of the execution of the General Power of Attorney dated 14th of February, 1990 by the appellant in favour of Mr. Thandi herein. The appellant makes no reference to any fraud but has merely stated that due to certain reasons she did not wish to continue with the said attorney and was revoking the same. This revocation deed was duly registered by the plaintiff and sent on 30th September, 1993 to the DDA.

33. Prior to the revocation of the authority, the respondent no.2 sold the flat in 1993 to Mr. Tajinder Singh Gujral respondent no.3 (defendant no.3 in the suit). It is admitted before us that on that date Shri A.S Thandi respondent no.2 was duly authorized by virtue of the General Power of Attorney dated 14th of February, 1990 and competent to execute the agreement to sell. The respondent No.3 Sh. Tajinder Singh Gujral further sold the property on 13th August, 1996 to respondent no.4. RFA(OS)No.2/2014 22 34. Mr. Sanjay Poddar, learned Senior Counsel

appearing for defendant no.4 has drawn our attention to the averments made in para 15 of the plaint to the effect that the appellant had got served a registered AD notice upon the DDA calling upon it to desist from inter alia entertaining the claim of any person in respect of the suit flat. This legal notice is dated 19 th of July, 1993 and filed by the plaintiff with the plaint. Paras 1 to 3 and 5 whereof make a telling story and read as follows: 1. That my client had applied under self financing scheme for the allotment of the flat at Basant Kunj and consequently a flat bearing no.4115, Block C, Pkt. IV Category III, Basant Kunj was allotted to my client vide file no.F126(0470)88/SFS/VK/IIIrd.

2. That after the allotment of the said flat, my client started paying the sale consideration in respect of the said flat as demanded from time to time and the possession of the same was delivered to my client.

3. That the said flat was defective and was not fit for habitation and consequently my clients husband met Dy. Director (SFS) and also submitted an Affidavit dated 29.7.1992 which was duly executed by my client.

4. xxx xxx xxx 5. That my client understands that the said A.S. Thandi is misusing the power of attorney and consequently my client got the said power of attorney cancelled and the said Shri A.S. Thandi is no longer holding the power of attorney on behalf of RFA(OS)No.2/2014 23 my client and is not competent to deal with any department on behalf of my client and my client has also informed him and also requested him from desist from appearing on behalf of my client in any of the department but instead of acceding to the legitimate request of my client in contemplating to convert the leasehold rights in respect of the said property into free hold with the object to dispose off the flat once the said flat was declared free hold. (Underlining by us) As on 19th of July, 1993, the appellant was thus aware of the firm allotment by DDA and claimed to be in its possession.

35. The appellant followed up with the DDA with a letter dated 24th January, 1994 wherein she again admits execution of General Power of Attorney in favour of defendant no.2 which she had revoked. So far as possession is concerned, the appellant however has taken a stand contrary to the stand taken by her in the legal notice. The appellant has stated as follows: 8. ...That I had never given any power

to Shri A. Thandi to take over the possession of the flat on my behalf. This too has also been managed by Shri Thandi with the staff of the D.D.A. and the possession letter was addressed to Executive Engineer and copy enclosed to Shri A.S. Thandi at his residential address i.e. 45 Vasant Enclave. Shri A.S. Thandi has also given number of other documents, affidavit and undertaking on my behalf with forged signature to complete the procedure and to get the possession which he took with the grace of the staff of the D.D.A. RFA(OS)No.2/2014 24 ...In view of the above stated facts, it is clearly established that Shri A.S. Thandi has managed with connivance of D.D.A. staff to take over the possession of the Flat with ulterior motive. It is, therefore, respectively prayed that the possession of the Flat NO.4115 Category III. Ist Floor Section C Pocket 4 Vasant Kunj, New Delhi may kindly be handed over to me with all consequential benefit and interest accrued on my deposit within seven days. (Underlining by us) Thus, the appellant was aware on 24th of January, 1994 that possession of the property in dispute stood handed over by DDA to Shri Thandi respondent no.2.

36. On this very issue of knowledge about the possession, we may note another letter written by the appellant on the 25 th September, 1995 to the DDA wherein she informed the DDA that I have also intended to initiate the proceedings against the occupier for taking possession in respect of the above flat. This letter was written in the context of objecting to the conversion of the flat in question by the DDA from leasehold to freehold in the name of any other person.

37. Let us see how the appellant acted. The appellant has also placed on record the letter dated 6th August, 1995 received by her from the DDA RFA(OS)No.2/2014 25 informing her about receipt of an application from Shri Tejender Singh Gujral for conversion from leasehold to freehold of the rights in the said property purchased by him from Shri Ajit Singh Thandi based on the general power of attorney and agreement to sell executed by the appellant in his favour. Even after receipt of this letter, instead of taking any legal action, the appellant had reacted by her afornoticed letter of 25th September, 1995 merely stating that after revoking the power of attorney, she was the owner and original allottee of the flat.

38. On the issue of possession/title of the question of the flat, in para- 7 of the plaint, also the appellant has stated that the possession letter/possession of the flat has not been handed over to the plaintiff. This averment has been made in the context of non-receipt of the final demand letter from the DDA.

39. The letters dated 24th January, 1995 and 26th September, 1995 thus manifest that the appellant had full knowledge about her ouster from the said property and of the defendants possession thereof, and contain her admissions on these facts.

40. On the 29th of November, 1995, the appellant also applied for conversion of the flat from leasehold to freehold in her name. RFA(OS)No.2/2014 As a 26 consequence, she was again reminded by the DDA by it letter dated 13th June, 1996 about the application dated 2nd June, 1994 received from the respondent no.3 herein, on the same issue. The appellant was clearly informed that there were two claimants of the flat and that a dispute had arisen. The DDA requested the appellant to get the disputes settled through the court of law so that necessary action could be taken by it as per the decision of the court. Still the appellant took no steps at all.

41. Finally four and half years thereafter certainly a reasonable period, on the 24th of January, 2001, the DDA proceeded to accept the application of respondent no.4 and converted the leasehold rights of the flat in question into freehold in his favour. A conveyance deed of the said date was also duly executed by the DDA in favour of the respondent no.4.

42. Feigning ignorance and innocence, in para 20 of the plaint the appellant claims that later on she came to know before the CIC that the defendant no.3 has sold the said flat to the defendant no.4 and the defendant no.4 has got the said flat free hold through execution of Conveyance Deed from LAB(H) on the basis of the said forged documents and is also in the occupation of the said flat in question. RFA(OS)No.2/2014 27 43. From the documents filed on record, it appears that more than thirteen years after receipt of DDAs letter dated 13th June, 1996 around fifteen years after the plaintiff admitted ouster from possession in her letter dated 24th January, 1994, the appellant made an application dated 28th May, 2009 under the Right to Information Act to the DDA in respect of the flat in question

seeking information and securing copies of the documents.

44. The appellant claims that the information sought was not supplied by the DDA on the plea that file was not traceable. The appellants appeal under Section 19 of the Right to Information Act was rejected by the Appellate Authority by a order passed on 28th of October, 2010. Reliance is placed on a FIR lodged by the appellant with the ACP (EOW) Crime Branch Qutab Institutional Area, New Delhi in this regard.

45. In para 27 of the plaint, the appellant has set out the contents of this complaint wherein she has stated that the flat was allotted to her through draw of lots on the 5th of March, 1993 and admitted that the possession letter was issued by the DDA on the 15th of March, 1993 in the name of Mr. Ajit Singh Thandi who on the basis of the attorney executed by her had taken physical possession thereof on the 20th of March, 1993. In para 27 of the plaint, the RFA(OS)No.2/2014 28 appellant has also admitted that the conveyance deed was executed in the name of Shri Manav Aggarwal respondent no.4 herein on the 13th of August, 1996.

46. So far as challenge to handing over possession of the flat in question is concerned, the appellant has prayed that the letter dated 20th March, 1993, by which possession of the said property was handed over, is liable to be declared null and void and that she was entitled to a decree for possession as well as an injunction against the defendant nos.2 to 3 against creation of third party interests. A notice dated 25th October, 2010 was issued by the appellant to the DDA which is claimed to be the statutory notice. Thereafter the above suit was filed on the 9th of February, 2011 seeking the prayers noted hereinabove.

47. So far as averments setting out the dates on which cause of action accrued in favour of the appellant are concerned, the same are stated in para 35 of the plaint which reads as follows: 35. That the cause of action for filing the present suit arose in favour of the plaintiff and against the defendants initially 10.06.1982 when the plaintiff got registration for the suit flat; thereafter it arose on 31.12.1987 when draw was held and the said flat was allotted to the plaintiff; when it arose when RFA(OS)No.2/2014 29 demand-cum-allotment letters were issued and the plaintiff made the payment; the cause of action then arose when original documents were

lost and a complaint was lodged on 17.01.1990 and thereafter it arose on 19.01.1990 when the letter and affidavit was submitted; the cause of action arose in the month of February, 1990 when the plaintiff was made to execute Deed of Attorney and other documents by the defendant no.2 fraudulently; the cause of action further arose when the plaintiff got cancelled/revoked the Deed of Attorney of the defendant No.2 and thereafter it arose on number of dates when the defendant No.1 entertained the defendant no.2 and other defendants with regard to the said flat. The cause of action arose when the defendant No.1 in collusion and connivance with the other defendants handed over the possession of the flat to the defendant no.2 on 23.03.1993 on the basis of the forged and fabricated documents. The cause of action arose on 08.05.2009, 28.05.2009, 30.12.2009 and on other various dates when the RTI application was filed and followed up. The cause of action then arose on 18.10.2010 when the plaintiff wrote letter with reference to the letter of defendant No.1 No.126(470)88/SFS/VK III/PT/1768 dated 13.10.2010 and demanded the possession of the flat and submitted affidavit that she has not sold out and also not parted away with the flat bearing No.4115, Sector C, Pocket IV, 1st Floor, Vasant Kunj, New Delhi and the cause of action also arose when the plaintiff send the statutory notice dated 25.10.2010 to the defendant No.1 and further arose when the Assistant Registrar CIC shown apprehension that the original file might have been misplaced deliberately. Thereafter the cause of action arose on 07.01.2011 when the defendant no.1 and other defendant were approached but they refused to undo the wrong acts. The cause of action arose in favour of the plaintiff and against the defendants on various occasions from the date of registration of the flat in question and the same is subsisting and continuing. RFA(OS)No.2/2014 30 Contentions of the appellant 48. It is contended by Mr. M.A. Ansari, learned counsel for the appellant on the ground that even though the possession was given by the DDA to the attorney of the plaintiff in the year 1993, but the appellant came to know of the same only in the proceedings under the Right to Information Act before the DDA. Reference is made to the letter dated 17th June, 1994 sent by the DDA calling upon the plaintiff to produce the documents. It is submitted that this letter shows that the DDA had not allotted the flat to any person.

49. Placing reliance on the pronouncement of the Supreme Court report at (2006) 3 SCC100Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V. Fortune Express and Ors., Mr. Ansari, learned counsel would contend that the learned Single Judge has misconstrued the meaning of the expression cause of action as well as material facts. It is further submitted that it was not open to the learned Single Judge to examine anything other than the averments in the plaint for the purpose of the adjudication of the application filed under Order VII Rule 11 of the CPC. RFA(OS)No.2/2014 31 In support of this submission, learned counsel placed reliance on the pronouncement of the Supreme Court reported at (2012) 8 SCC701Bhau Ram v. Janak Singh and Ors. Contentions of the respondent 50. On the other hand, Mr. Sanjay Poddar, ld. Senior Counsel for the respondent no.4 has submitted that in addition to the submissions to the plaint it is open to this court to examine the documents filed by the plaintiff in order to adjudicate upon the issue as to whether the suit claimed was barred by limitation.

51. Ld. Senior Counsel submits that the supply of documents by the DDA or the record of the flat in question being not traceable by the DDA is not any part of the cause of action giving rise to the suit.

52. In support of these submissions, reliance is placed on (2007) 5 SCC614Hardesh Ores (P) Ltd. v. Hede and Company; 151 (2008) DLT463M.R. Krishnamurthi v, Chandan Ramamurthi & Ors.; 2012 (5) AD (Delhi) 186 Tilak Raj Bhagat v. Ranjit Kaur; RFA (OS) 65/2012, decided on 2nd July, 2012 T.R. Bhagat v. Smt. Ranjit Kaur & Ors. (1977) 4 SCC467T. Arivandandam v. T.V. Satyapal & Anr.; (2005) 5 SCC548N.V. Srinivasa RFA(OS)No.2/2014 32 Murthy & Ors. v. Mariyamma (dead) by proposed LRs & Ors.; (2004) 7 SCC541Ramiah v. N. Narayana Reddy (dead) by LRs; 2011 (10) Scale Khatri Hotels Private Limited & Anr. v. Union of India & Anr. and 2005 IV AD (Delhi) 639 Prinda Punchi (Smt.) And Anr. v. Municipal Corporation of Delhi & Ors.

53. It is submitted that in order to decide an application under Order VII Rule 11 of the CPC, the court is required to conduct a meaningful reading of the plaint in its entirety.

54. The primary prayer made by the appellant is grant of the relief of declaration that the letter dated 20th March, 1993 by which possession of the property was given to Shri A.K. Thandi be declared to be null and void . This relief would be covered under Article 58 of the Limitation Act which provide a period of limitation of three years from the time when the right to sue first accrues.

55. Drawing attention to the above narration of facts and submissions in the plaint, it is submitted that the appellant was admittedly aware that the DDA had transferred possession of the suit premises. In this regard Mr. Poddar, learned Senior Counsel place reliance on the submissions made in para 35 of RFA(OS)No.2/2014 33 the plaint wherein it was averred that the cause of action accrues on 20 th of March, 1993 when the possession of the suit property was handed over to Shri A.S. Thandi respondent no.2.

56. Mr. Sanjay Poddar, places reliance on the pronouncement of the Supreme Court reported at 2011 (10) Scale 190 Khatri Hotels Private Limited and Anr. V. Union of India & Anr. for the construction of the expression first in Article 58 of Schedule (1) of the Limitation Act.

57. So far as prayer for possession is concerned, it is submitted that the claim for possession is governed by Article 64 and 65 of the Limitation Act which prescribe a period of 12 years from the date of ouster. It is submitted that in the instant case, the appellant claimed possession in the legal notice dated 16th July, 1993 and ouster in the letter dated 24th January, 1994. On 25th of September, 1995, the appellant threatened the DDA that she would initiate legal proceedings against the occupier thereby clearly admitting the fact that she was not in possession of the premises and that someone else was in possession.

58. The appellant had set up a case of fraud by Shri Thandi in the year 1993, which was the fact which constituted the cause of action for filing the RFA(OS)No.2/2014 34 suit. Ld. Senior Counsel also submits that the appellant cannot rely on the letter issued by the DDA in the year 2010. It is further submitted that the letter of 2010 was not an admission on the part of the contesting defendant no.4 and that even if this letter was to be treated as an admission, this admission was way beyond the date of expiry of the period of limitation for bringing

the suit for declaration. Placing reliance on the pronouncement of the Supreme Court reported at 2004 (7) SCC541Ramiah v. N. Narayana Reddy (Dead) by LRs, it is submitted that the plaintiff has admitted knowledge of her ouster in the year 1993 on 16th July, 1993, 24th January, 1994 as well as 25th September, 1995. The suit for possession filed on 9th of February, 2011 is way beyond the 12 years period of limitation and is hit by the bar of limitation. Whether the suit is barred by limitation?.

59. The Ld. Single Judge has held that the suit was barred by limitation. We propose to examine the prayers made by the appellant in the plaint in seriatim hereafter in the light of the factual matrix, statutory provisions and legal principles noted above. The statutory provision for filing the suit seeking a decree for declaration is contained in Article 58 of Schedule (1) of RFA(OS)No.2/2014 35 the Limitation Act which stipulates a period of three years when the right to sue first accrues.

60. In the plaint, it is averred that respondent no.2 played a fraud to usurp the appellants flat and when the fraud played by respondent no.2 came to light, the appellant got cancelled the said deed of attorney which along with other documents were got signed fraudulently in the absence of the plaintiffs husband. Mr. Ansari has vehemently urged that she gained knowledge of the fraud only after the 2010 when she approached the DDA for information under the Right to Information Act.

61. In an effort to assert that his client was not aware of the facts and a fraud was committed upon the plaintiff by the private respondents, Ld. counsel for the appellant has heavily relied on the office letter dated 20th January, 1994 sent by the DDA to the appellant requiring her to bring identity proof and to attend the DDA with original documents. This letter was followed up with a letter dated 17th June, 1994 calling upon the plaintiff to attend the office of DDA along with original documents in respect of the flat in question on 24th June, 1996 at 03:00 p.m. RFA(OS)No.2/2014 36 62. We have noted above that admittedly the power of attorney dated 14th February, 1990 registered by the plaintiff on the 19th of February, 1990 and that she had also executed agreement to sell and other

documents in favour of Shri A.S. Thandi on the same date. The attorney came to be revoked by the registered revocation deed dated 26th June, 1993.

63. We have noted above the letter dated 16th August, 1995 sent by the DDA in response to the appellants application for conversion of the flat to freehold in her name whereby the DDA has informed the appellant about the application received from Mr. Tejender Singh Gujral respondent no.3 herein for conversion of rights in the subject flat from leasehold to freehold. The appellant was therefore, aware in August, 1995 also of the fact that Mr. Thandi had further sold the flat to Mr. Tejender Singh Gujral.

64. The DDA further requested her to get the dispute settled through the court of law. Therefore, the plaintiff was fully aware about the position of the firm allotment of the fact, the transactions relating to the flat in question as well as the status of the possession of the flat as back as in the year 1993, which position was reiterated by the DDA and admitted by her in the years 1993, 1994 1995 as well as in 1996. RFA(OS)No.2/2014 37 65. The learned Single Judge has noted the well settled legal position that for computing limitation for a suit of declaration, the plaintiff has to assert a right and there has to be infringement of the said right or a threat to infringe that right by the defendant.

66. In the plaint, the appellant is asserting rights in a flat over which the respondents had admittedly threatened and violated between the year 1993 to 1996. Despite knowledge of the claims set up by the respondents, the appellant took no steps at all to seek declaration of her title till she filed the suit almost 19 years later. Let alone filing a case, the appellant did not even issue a notice to the private respondents ! 67. Mr. Ansari, ld. counsel for the plaintiff has drawn our attention to another pronouncement of the Supreme Court wherein valuable light is shed on the meaning of the expression cause and material facts. In the pronouncement reported at 2006 (3) SCC100 Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V. Fortune Express and Ors., the court was called upon to consider whether the plaint in question disclosed the cause of action. In para 12 and 18, the court considered the question of what was the material to be considered for determination of whether the plaint discloses the

RFA(OS)No.2/2014 38 cause of action?. The court also considered the meaning of the expression cause of action referring to Order VI Rules 2 and 4 of the CPC which are concerned with the pleadings. The Supreme Court held that the question as to whether the plaint disclosed the cause of action or not is a question of fact which has to be gathered on the basis of the averments made in the plaint. We may usefully set out para 16 and 18 of the pronouncement in extenso which reads as follows: 16. The trial Court must remember that if on a meaningful and not 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. (See T. Arivandandam v. T.V. Satyapal and Anr. [1978]. 1SCR74217. xxx xxx xxx 18. In Raptakos Brett & Co. Ltd. v. Ganesh Property AIR 1998 SC3085 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 of Order VII was applicable. (Emphasis by us) 68. Full particulars of the alleged fraud were required to be given in accordance with under Order 6 Rule 4 of the CPC. In view of Order 6 Rule RFA(OS)No.2/2014 39 4, the plaintiff was bound to have disclosed all relevant dates. Certainly the concealed facts were material facts within the meaning of the expression under Order 6 Rule 12 of the CPC.

69. We have extracted above the pleadings of the appellant in the plaint. The plaint is in fact eloquent by its silence. Instead of giving the material particulars of dates and time, the plaint is replete with expressions such as when later and after some time. The use of these expressions has been vehemently objected to on behalf of the contesting defendant no.4 on the ground that they are not only vague but manifest the fact that the plaintiff has concocted the allegations against the defendant. We find substance in this objection.

70. The plaintiff also does not even remotely suggest the dates or details of alleged fraud played by any of the defendants. Despite admitting knowledge of the allotment of the flat on the date when it was effected as well as handing over of possession by the DDA to the defendant No.2 in 1993, the plaintiff has tried to

create a facade of ignorance utilizing the shield of the query under the Right to Information Act in the year 2009. This faade is completely unacceptable given the admitted knowledge of all the material facts giving RFA(OS)No.2/2014 40 rise to the cause of action for the reliefs of declaration, possession and injunction.

71. We also find from the reading of the plaint that the plaint has made very clever attempts in concealing all relevant dates as they amply establish the knowledge of the appellant with regard to all facts and events shortly after they had occurred. The prayer in the suit has also been very cleverly couched as if the plaintiff was merely seeking a declaratory relief coupled with entitlement of the flat.

72. A similar case was examined by the Supreme Court while considering an application under Order VII Rule 11 of the CPC in the pronouncement reported at 2007 (5) SCC614 2007 (7) SCALE348Hardesh Ores Pvt. Ltd v. M/s Hede and Company, the observations of the Supreme court in para 33 to 36 shed valuable light on the manner in which the claim of the plaintiff has to be construed and read as follows: 33. The respondent sought rejection of the plaint by filing application under Order VII Rule 11 CPC contending that the suit was barred by limitation on the face of it. It was contended before the High Court as also before us that the plaint has been cleverly drafted to give it the appearance of a simple suit for injunction to enforce the terms of clauses 15 and 20 of the agreement which incorporated negative covenants prohibiting RFA(OS)No.2/2014 41 mining operation by anyone else except the appellant Hardesh, or without its permission. It was submitted before us that the law is well settled that the dexterity of the draftsman whereby the real cause of action is camouflaged in a plaint cleverly drafted cannot defeat the right of the defendant to get the suit dismissed on the ground of limitation if on the facts, as stated in the plaint, the suit is shown to be barred by limitation. 73. So far as the relief of declaration is concerned, the Limitation Act prescribes limitation of three years which period begins from the date when the right to sue first accrues. In this regard, we may usefully refer to the pronouncement of the Supreme Court reported at 2011 2011 (10) Scale 190 Khatri Hotels Private Limited and Anr. V. Union of India & Anr. which has been relied upon by the learned Single Judge as well which read as follows: (para 25 and

27) 25. Article 120 of the 1908 Act was interpreted by the Judicial Committee in Mt. Bolo v. Mt. Koklan AIR 1930 PC270and it was held: There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least, a clear or unequivocal threat to infringe that right, by the defendant against whom the suit is instituted. xxx 27. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word first has been used between RFA(OS)No.2/2014 42 the words sue and accrued. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. (Emphasis supplied) 74. The learned Single Judge has also placed reliance on the pronouncement of the Supreme Court judgment reported at AIR 2010 SC3240 Daya Singh v. Gurdev Singh. So far as computation of the date from which the accrual of the right to sue has to be computed, the Supreme Court referred to the decision of the Privy Council in para 7 at AIR 1930 PC270Mt. Bolo v. Mt. Koklan & Ors. The discussion by the court thereafter in paras 8 and 9 of the report are useful and read thus: 8. A similar view was reiterated in the case of C. Mohammad Yunus v. Syed Unnissa and Ors. AIR 1961 SC808in which this Court observed: the period of 6 years prescribed by Article 120 has to be computed from the date when the right to sue accrued and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right. RFA(OS)No.2/2014 43 9. In the case of C. Mohammad Yunus (supra), this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is atleast a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry into the revenue record cannot give rise to cause of action. 75. (Underlining by us) As per the allegations made by the plaintiff in the plaint and the documents, her rights had been violated by defendants no.2 and 3 on the date(s) and year(s) noted above. So far as the respondents objection that the relief for declaration is barred by limitation, we have also noted above the submissions made by the appellant in the plaint with regard

to fraud having been committed by defendant no.2 resulting in her cancelling the general power of attorney. This general power of attorney was registered as back as on the 19th February, 1990 and cancelled on 26th of June, 1993.

76. The plaintiff had full knowledge that possession of the flat allotted to her had been handed over to defendant no.2 in the year 1993 itself and that it had been sold to defendant no.3.

77. In the legal notice dated 19th July, 1993, the plaintiff had referred to the allotment of the flat bearing No.4115, Block C, Pocket IV, Category III, Vasant Kunj to her and that she has claimed possession of the flat. Therefore, RFA(OS)No.2/2014 44 the plaintiff was well aware about full particulars of the allotted flat. The DDA also very fairly informed the appellant by its letter dated 16 th August, 1995 of the receipt of the application from Mr. Tejender Singh Gujral (respondent no.3 herein) for conversion of the said flat to freehold from leasehold which stood purchased by him from Shri Ajit Singh Thandi on the basis of an agreement to sell and general power of attorney. It is apparent from this communication that the respondent no.3 had set up a claim to the flat which conflicted with the claims of the appellant. For this reason, in response, on 25th of September, 1995, the appellant had clearly written that she intended to initiate proceedings against the occupier for taking possession of the flat.

78. When the appellant sought conversion of the flat in her favour by an application made on 29th of November, 1995, the DDA again clearly wrote to her on the 13th of June, 1996 that in view of the prior application dated 2 nd of June, 1994 by Mr. Tejender Singh Gujral and Mr. Amrit Kaur Gujral for seeking conversion, there were two claimants for the same flat and a dispute had arisen. The DDA had requested the appellant to get the dispute settled through court of law. The appellant was further clearly aware of the fact that RFA(OS)No.2/2014 45 respondent no.3 had set up a claim of title and entitlement to the flat which conflicted with her claim. Despite knowledge, the plaintiff took no steps at all to defend her entitlement.

79. DDA has since effected conveyance of the subject property as well to the knowledge of the plaintiff. The plaintiff filed the suit in the year 2011 seeking a

mere declaration qua the letter of 1993 whereas rights in the immovable property stood absolutely conveyed by the DDA to defendant no.4 by a registered conveyance deed.

80. Certainly supply or non-supply of documents by the DDA or the DDA file being not traceable is not any part of cause of action for filing the suit. It was the alleged fraud committed by Mr. Thandi in the year 1993 which gave rise to the cause of action in favour of the plaintiff.

81. In view of the limitation prescribed under Article 58 of the Limitation Act, the suit of the plaintiff seeking the decree for declaration having been filed more than three years after the cause of action accrued in her favour is hopelessly barred by limitation. RFA(OS)No.2/2014 46 82. Let us also examine the submissions of Mr. Ansari with regard to relief of possession that the plaintiff came to know only in the year 2010 from the DDA under the Right to Information Act that the DDA had given possession in 1993. This submission is contrary to the plaintiffs admissions in the plaint and documents and is completely unbelievable. The oral submission of learned counsel that the letter of the DDA of 17th of June, 1994 calling upon the appellant to produce documents shows that the DDA had not allotted the flat is also completely misconceived inasmuch as in the legal notice dated 19 th July, 1993, the appellant claimed to be in possession however, in the letter of 24th June, 1994 and 25th September, 1994, the appellant had stated that respondent no.2 had taken possession and was calling upon DDA to give the possession to her.

83. As back as on 25th of September, 1995 the appellant had written to the DDA that she was going to initiate proceedings for possession against the occupier. It is well settled that so far as limitation for suing possession is concerned, be it based on previous possession under Article 64 and otherwise under Article 65 of the Limitation Act it is 12 years from the date of the ouster. The suit has been filed almost 19 years after the plaintiff was RFA(OS)No.2/2014 47 admittedly ousted from the property. The relief of possession is therefore, barred by limitation.

84. The relief of the decree for injunction is premised on validity of title of the appellant and would also rest on grant of the other reliefs. Additionally this prayer

is way beyond the period of limitation of three years from the alleged violation of the appellant rights, given the above discussion. No error can be found in the observations of the Ld. Single Judge that the prayer for this relief is also beyond limitation.

85. The Ld. Single Judge has therefore rightly held that the reliefs claimed by the plaintiff were barred by limitation.

86. We have set out above Section 3 of the Limitation Act which mandates that the suit made after prescribed period shall be dismissed. The statutory provision states that even though limitation has not been set up as a defence. The legislation incorporates a mandate to the court to therefore, examine every plaint placed before it from the aspect of limitation. There is no option for the court which concludes that if the reliefs claimed by the plaintiff before it are barred by limitation, the suit has to be dismissed. RFA(OS)No.2/2014 48 87. The suit of the plaintiff was thus clearly barred by law and the plaint was liable to be rejected under Order VII Rule 11 (d) of the CPC. Failure to seek cancellation of conveyance deed in favour of defendant no.4 88. We may note one more important aspect. The plaintiff claims that under the Right to Information Act she learnt that the DDA had executed the conveyance in favour of defendant no.4. Despite knowledge thereof, the plaintiff has not made a prayer for cancellation of the conveyance deed. The plaintiff could be entitled to decree of possession only after she had established her title to the flat and entitlement to the possession thereof. Given the fact that the property stood conveyed by a registered instrument in favour of defendant no.4, certainly the plaintiff would not be entitled to the relief of possession unless the appellant was granted cancellation thereof.

89. In this regard, we may advert Section 34 of the Specific Relief Act which reads as follows:

34. Discretion of court as to declaration of status or right.-Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, is title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief. RFA(OS)No.2/2014 49

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation.-A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee. (Emphasis supplied) 90. The plaintiff has merely sought a decree of declaration that the letter dated 30th March, 1993 whereby possession of the suit property was handed over to respondent no.2 and 3 and subsequent documents be declared illegal. Several documents have been referred to in the plaint which include the general power of attorney, agreement to sell executed on 14th February, 1990 by the appellant in favour of respondent no.2 as well as, the consequential execution and registration of the conveyance deed by the DDA in favour of the defendant no.4 yet no relief qua these documents has been sought.

91. The learned Single Judge has relied on the pronouncement of the Andhra Pradesh High Court reported at AIR 2004 AP29Sannidhi Ratnavathi v. Arava Narsimhamurthy and Anr. wherein the Andhra Pradesh High Court held that in the facts of that case, as the plaintiff has lost title and RFA(OS)No.2/2014 50 interest in the suit property, the plaintiff has to avoid the said transaction by which he lost the title. Unless he avoids the said transaction in the manner known to law, he cannot become owner of the said property. He has to ask for specific relief to set aside the alienation covered by the sale deed executed by his father.

92. The Supreme Court of India had occasion to consider these very issues raised in an application under Order VII Rule 11 of the CPC in similar circumstances in the case reported at AIR 2005 SC2897N.V. Srinivasa Murthy and Ors. v. Mariyamma (dead) and Ors. While considering the said application, the Supreme Court held as follows: 11. On the above averments, relief of declaring the registered sale deed dated 5.5.1953 to be a loan transaction and second relief of Specific Performance of oral agreement of reconveyance of the property by registered instrument should and ought to have been claimed in the suit. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking declaration that the registered sale deed dated 5.5.1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for obtaining re-conveyance deed according to the

plaintiff's own averments in paragraph 9 of the plaint, arose on 25.3.1987 when the plaintiffs claimed to have paid back the entire loan amount and obtained a promise from the defendants to reconvey the property. Reckoning the cause of RFA(OS)No.2/2014 51 action from 25.3.1987, the suit filed on 26.8.1996, was hopelessly barred by time.

12. The averments in paragraph 12 of the plaint concerning the mutation proceedings before the revenue authorities did not furnish any fresh cause of action for the suit and they appear to have been made as a camouflage to get over the bar of limitation. The dispute of mutation in the revenue court between the parties arose only on the basis of registered sale deed dated 5.5.1953. The orders passed by Tehsildar/Assistant Commissioner did not furnish any independent or fresh cause of action to seek declaration of the sale deed of 5.5.53 to be merely a loan transaction. The foundation of suit does not seem to be the adverse orders passed by revenue courts or authorities in mutation proceedings. The foundation of suit is clearly the registered sale deed of 1953 which is alleged to be a loan transaction and the alleged oral agreement of reconveyance of the property on return of borrowed amount. .

14. After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5.5.1953, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Courts. (Underlining by us) 93. The plaint is liable to be rejected and is not maintainable even in view of Section 34 of the Specific Relief Act and the aforenoticed legal position.

94. In the present case, the plaintiff has merely sought declaration that the letter dated 20th March, 1993 by which the possession of the flat in question RFA(OS)No.2/2014 52 was handed over by the DDA to Shri Thandi and subsequent documents issued/executed thereafter are illegal, improper, ineffective, malafide and null and void.

95. Despite knowledge of the registered conveyance deed in favour of defendant no.4, the plaintiff has deliberately sought no prayer in respect thereof. The proviso

to Section 34 of the Specific Relief Act mandates that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. The plaintiff has proceeded on the basis as if there is no conveyance deed by the DDA the flat in favour of defendant no.4 and as if the flat still belongs to her.

96. We agree with the learned Single Judge on this aspect in the instant case as well. The prayer of the plaintiff merely seeking a declaration to the conveyance of the property by the registered sale deed is hopelessly misconceived. The prayer for decree of declaration is also barred by Section 34 of the Specific Relief Act. Rejection of plaint or dismissal of suit 97. We find that by the impugned judgment dated 11th October, 2013, after concluding that the relief claimed by the plaintiff in the plaint is barred by RFA(OS)No.2/2014 53 limitation, the learned Single Judge has dismissed the suit as barred by law. We find that Order VII Rule 11 of the CPC merely empowers the court to reject the plaint.

98. Mr. Sanjay Poddar, learned Senior Counsel in the defence has submitted that the learned Single Judge was empowered to suo motu proceed in the matter also on the basis of Order XII Rule 6 of the CPC in view of the admissions contained in the plaint and documents filed and relied upon by the appellant.

99. Order XII Rule 6 of the CPC enables the court at any stage of the suit, where admission of facts have been made either in the pleadings or otherwise, either on the application of the party or on its own motion, and without waiting for determination of any other question between the parties, to give such judgment as it thinks fit, having regard to the admission(s).

100. We have noted above the several material admissions made by the appellant in the plaint as well as the letters which have been extracted above which lead to the inevitable conclusion that the relief of decree of declaration sought by the appellant is hopelessly barred by Article 58 of the Limitation Act while the relief of possession is barred under Articles 64 and 65 of the RFA(OS)No.2/2014 54 Limita1tion Act. The relief for declaration is also barred under Section 34 of the Specific Relief Act.

101. In the judgment dated 11th October, 2013, the learned Single Judge has adverted at length to these very admissions. Having concluded that the suit was barred by limitation on the defendants application, the learned Single Judge had the jurisdiction therefore, based thereon, to proceed to judgment. We are of the view that the learned Single Judge was fully empowered either to reject the plaint under Order VII Rule 11 of the CPC granting the prayer made by the defendant no.4 in I.A.No.5642/2011 or to proceed to judgment and to dismiss the suit as barred by the law exercising jurisdiction under Order XII Rule 6 of the CPC.

102. We are supported by the view we have taken in the following observations of the Supreme Court in T. Arivandandam (Supra) which reads as follows: 6. The trial Court in this case will remind itself of Section 35-A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned. RFA(OS)No.2/2014 55 7. We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending Judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candor and correct advocacy. In view of the above, it is therefore unnecessary for us to alter the result arrived at by the learned Single Judge. Result 103. We agree with the learned Single Judge that the suit is vexatious and manifestly misconceived. The present appeal is also an abuse of the process of law. The appellant has unnecessarily

caused valuable judicial time to be RFA(OS)No.2/2014 56 expended on a matter which is completely without any factual and legal merit and, therefore, deserves to be burdened with exemplary costs. The appeal is therefore, dismissed. In these circumstances, respondent no.4 would be entitled to costs throughout as well, legal fees in the appeal being quantified at Rs.50,000/-. CM No.137/2014 In view of the dismissal of the appeal, this application is dismissed. (GITA MITTAL) JUDGE (SUNIL GAUR) JUDGE SEPTEMBER9 2014 mk RFA(OS)No.2/2014 57