

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL REVISION APPLICATION NO. 441 of 2026****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

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Approved for Reporting	Yes	No
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NIRAV MADHUKAR BUCH**Versus****LILABEN BHIKHUBHAI THAKOR & ORS.****Appearance:****MR. AADIT R SANJANWALA(9918) for the Applicant(s) No. 1****CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT****Date : 31/08/2026****JUDGMENT**

1. Heard Mr. Sanjanwala, learned advocate for the petitioner, at length.

2. The present revision application is filed under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as "**CPC**") against order dated 14.07.2026 passed by Principal Senior Civil Judge, Valsad, below Exh.115 in Special Civil Suit No.39 of 2019, whereby the trial court dismissed the application filed by petitioner under Order VII Rule 11 of CPC.

2.1. It is not in dispute that the impugned application was

filed on 27.10.2025 below Exh.115, at the stage of recording of defendant's evidence and now, the suit has reached to the stage of final arguments.

3. Mr. Sanjanwala, learned advocate, would submit that despite clear admission forthcoming from the side of plaintiff in his cross-examination that he was aware about the dispute germane to the suit since 1984, the suit was filed in the year 2019, then such suit is hopelessly time barred and noticing such admission on the part of the plaintiff, the trial court vide its impugned order dated 14.07.2026 could not have rejected the impugned application of petitioner filed under Order VII Rule 11(d) of CPC.

3.1 Mr. Sanjanwala, learned advocate, would submit that the registered sale deed executed in favour of the defendant No.7 in the year 2014 by the defendant Nos. 4 and 6 is not challenged in the suit though within knowledge of the predecessor of the plaintiff in year 2014 itself from whom the petitioner (defendant No.8) purchased the suit property by way of registered sale deed in the year 2019. It is submitted that the suit filed in the year 2019 only challenging the sale deed executed in favour of the petitioner (defendant no.8), then the

plaint is required to be rejected.

3.2 Mr. Sanjanwala, learned advocate, would further submit that merely because the impugned application was filed at the stage of recording of evidence of defendant and now the matter is at the stage of final arguments, it is no ground to reject the impugned application.

3.3 Mr. Sanjanwala, learned advocate, would further submit that as per settled preposition of law, the application can be filed under Order VII Rule 11 of CPC at the any stage of the proceeding of the suit and if a case is made out by the applicant, the trial court was supposed to decide such application on merit rather than rejecting it on technical grounds. It is further submitted that even the prayers made in the suit vis-a-vis the evidence on record, the suit itself is time barred and it would be futile exercise to allow such suit to proceed further, and to invest the time in final arguments and a final judgment would be an exercise in futility.

3.4 According to Mr. Sanjanwala, learned advocate for the applicant, the impugned application ought to have been allowed by the trial court once observed in the impugned order that suit is time barred, and this Court should exercise its

revisional jurisdiction in favor of the petitioner.

4. No other and further submissions have been made by the learned advocate for the petitioner.

5. Having heard Mr. Sanjanwala, learned advocate for the applicant, *prima facie*, it appears that suit in question was instituted in the year 2019 and impugned application filed under Order VII Rule 11 of the CPC, by petitioner-defendant no.8, on 27.10.2025 which came to be rejected by trial court vide its impugned order dated 14.07.2026. It is not disputed by the petitioner that the impugned application was filed after oral evidence of plaintiff had concluded and during the recording the defendant's evidence. It is also not in dispute that the suit has reached to the stage of final arguments. Today, it is a date of final arguments before the trial court.

6. *Prima facie*, the entire emphasis of the defendant no.8 to reject the plaint, is on the basis of the so-called admission forthcoming during the cross-examination of the plaintiff. The petitioner unfortunately could not understand the difference between scope and interference of the Court to reject the plaint at the stage of Order VII Rule 11 of CPC and dismissal of the suit upon appreciation of evidence. One cannot dispute

that plaint, which can only be rejected by a bare reading of the plaint only. The defence and documents of the defendant cannot be looked into by Court while adjudicating the application filed under Order VII Rule 11 of the CPC. According to the defendant no.8, certain admissions have been made by plaintiff during his cross-examination and the documents which are filed by the defendant might also have been admitted by plaintiff. At the same time, such admission and evidence cannot be looked into by the Court while examining an application filed under Order VII Rule 11 of CPC.

7. Apart from the aforesaid facts, the stage at which the petitioner filed the impugned application under Order VII Rule 11 is also required to be taken into account by this Court. It has been observed and experienced by this Court that filing an application under Order VII Rule 11 at any stage of the proceedings is nowadays misused by defendant and for any reason, such application being filed either to delay the adjudication of the suit or not to lead evidence to prove his case. Merely because the defendant has right to file an application under Order VII Rule 11 of CPC at any stage of proceeding would not mean that the defendant can be

permitted to file such application at the fag end of trial.

7.1 At this juncture, it would be apt to refer to and rely upon the full bench decision of Hon'ble the Supreme Court of India in the case of **M/s Bhagya Estate Ventures Pvt. Ltd. Vs. Narne Estates Pvt. Ltd. & Anr., Civil Appeal No.4570 of 2023** dated 11.09.2024, wherein it has noticed such type of practice of defendant and held thus:

*"12. The above position holds good as we are not of the opinion that issuance of summons shall foreclose the right of the defendant to seek rejection of plaint; **but the focal issue for consideration is that till when and for how long can this right of the defendant survive?***

*13. It is amply clear that the purpose behind such a provision is to ensure that the plaints or petitions which are defective, for any of the reasons enumerated, shall not be allowed to proceed further and shall be put to an end before they progress to an advanced stage. **When such is the purpose, we fail to understand as to how an application for rejection of a plaint can be entertained at a stage where written submission has already been filed, evidence has been led and the trial has substantially reached the stage of final arguments, as in the present case. This would rather go completely against the objective of the provision and would effectively not serve the purpose which it intended to.***

*14. **Moreover, when the proceedings have reached such an advanced stage of trial and the Court has gone through the merits of the case, it is fair to presume that the Court has already applied its mind to the substantive submissions and cannot make a prima facie conclusion about a plaint being improper at the outset or not.** Also, it is a settled position of law that when the court is considering an application under Order VII Rule 11, it must only peruse and consider the averments in the plaint to check whether the plaint is defective for any of the reasons provided under the rule or is a proper plaint. **Since the plaint is the only material to be considered while deciding an application seeking***

rejection of plaint, then in a case where plaint has been registered, written submission has been filed, evidence has been recorded, and the parties are ready for final arguments, it is only natural that some form of bias or opinion regarding the merits of the case would crop up in the mind of the court. In such a scenario, looking at the plaint in isolation and deciding the rejection application based solely on prima facie reading of the plaint would not be possible. At this point, the trial has rather fructified to a stage where the dismissal of a suit on merits is a more appropriate course of action instead of rejecting a plaint at the outset which should have been done at a preliminary stage.

15. It is already a clarified position of law that without disposing of an application under Order VII Rule 11, CPC, the court cannot proceed with the trial. When this is the position of law and the purpose of the provision is also settled, then, we see no reason for the right of the defendant to raise such a plea at a far belated stage such as final arguments or nearing conclusion of the trial. Allowing such pleas to be raised after the trial has proceeded so far would not only defeat the intent of the provision but would also go against the principle of equity and would lead to wastage of the court resources. Additionally, allowing such rights to survive till eternity only act as a catalyst for the defendant to misuse the provision to prolong or delay the trial and abuse the process of law.

16. Having considered the facts and circumstances of the present case, and in particular, having noticed the conduct of the defendant-respondents as recorded by the Trial Court and also the fact that full trial had already been concluded as both the parties had already closed their evidence and the matter was ripe for final arguments, consideration of the application under Order VII Rule 11 was rightly declined by the Trial Court. The High Court erred in allowing the same and rejecting the plaint.”

(Emphasis supplied)

7.2 Accordingly to my view, such type of application filed at such a belated stage of trial of the suit requires to be rejected with the costs, otherwise for any reason, defendant may

engage the trial court in adjudication of such application, thereby he would not allow the trial court to adjudicate the *lis* on merits.

8. Even the impugned order did not remotely suggest that trial court has accepted the submission of the petitioner that suit is time barred, rather while assigning reasons, the submission of petitioner-defendant no.8 was recorded that as per oral evidence of plaintiff (cross-examination), the suit is time barred. The aforesaid was not an observation or finding recorded by the trial court in the impugned order. Rather, the trial court has correctly observed that issue of limitation is already framed and it requires to be decided along with the other issues.

9. Thus, having considered the ratio of the decision *supra*, the facts of the case at hand is more or less similar wherein also the impugned application was filed at the fag end of trial. It is undisputed that by now, the suit is reached to the stage of final arguments, and in such factual background of the case at hand, the trial court has not committed any jurisdictional error by dismissing the impugned application.

10. Even though this Court is not inclined to entertain the

impugned application by not entertaining this revision application, nonetheless, the trial court is required to decide the *lis* between the parties without being influenced by any of the aforesaid observations made by this Court.

11. Having considered the aforesaid facts and circumstances of the present case and for the reasons supra, the impugned application filed under Order VII Rule 11 of CPC was correctly not entertained by the trial court; rather, it was to be dismissed with costs. Thus, having not found any jurisdictional error committed by the trial court while passing impugned order, the present revision application is dismissed with costs of Rs. 10,000/-.

12. The petitioner-defendant no.8 is hereby directed to deposit cost of Rs. 10,000/ with DLSA, Valsad, within one month from the date of the receipt of copy of this order. The trial court shall see the compliance of this order by petitioner.

(MAULIK J.SHELAT,J)

DEEPAK GEHLOT