IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2457 OF 2026

Bharat Mulji Khona ... Petitioner
versus
M/s. Fiza Construction Company and Ors. … Respondents

WITH
WRIT PETITION NO.2458 OF 2026

Bharat Mulji Khona ... Petitioner
versus
M/s. Fiza Construction Company and Ors. … Respondents

WITH
WRIT PETITION NO.2505 OF 2026

Bharat Mulji Khona ... Petitioner
versus
M/s. Fiza Construction Company and Ors. … Respondents

Mr. Mayur Khandeparkar with Mr. Nishant Tripathi, Mr. Pranav Vaidya i/by M. Tripathi and Co., for Petitioner.
Dr. Uday Warunjikar with Mr. Siddhesh Pilankar, for Respondent No.1.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 1 APRIL 2026
PRONOUNCED ON : 17 APRIL 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. All these Petitions arise out of the orders passed by the learned Civil Judge, Sr. Division, Panvel, in Special Civil Suit No.140 of 2008 and since the issues raised in each of the Petitions are intermingled, all these Petitions were

heard together and are being decided by this common judgment.

3. The background facts leading to these petitions can be summerized as under :

3.1 Smt. Akkabai Shantaram Patil (D1), Parvati Gana Patil (D2), Bhagwan Krushna Bhagat (D3) and Smt. Shevantibai Ashok Bhagat (D6) were the project affected persons. The lands held by these Defendants was acquired by CIDCO for new town development. In lieu of the acquisition of the lands, the land holders were, inter alia, entitled to a developed plot under 12.5% scheme. The Petitioner – Defendant No.9 claims that, on 21 May 2005, Defendant Nos.1, 2, 3 and 6 had agreed to transfer the said plot, to be allotted to them, in favour of the Petitioner. As Defendant Nos.1, 2, 3 and 6 did not transfer the plot as agreed, the Petitioner instituted a suit being SCS No.85 of 2005, wherein the consent decree came to be passed on 27 September 2005. In the meanwhile, on 5 February 2006, Defendant Nos.1 to 6 allegedly executed an Agreement in favour of the Plaintiff – Respondent No.1, to sell the very same plot.

3.2 Eventually, the Respondent No.1 instituted a suit for specific performance of the agreement against Defendant Nos.1 to 6 seeking a declaration that the decree passed in SCS No.85 of 2005 and the subsequent instruments executed on the strength of the said decree were not binding on the Plaintiff; for specific performance of the contract contained in the

Agreement dated 5 February 2006 and for consequential reliefs. On 18 July 2016, the Petitioner came to be impleaded as Defendant No.9 in the said suit.

3.3 The Petitioner filed an application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, on the ground of bar of limitation and absence of cause of action. As the trial Court rejected the said application, the Petitioner preferred a Revision before this Court. By an order dated 23 April 2024, the Revision application came to be disposed, keeping all the contentions of the parties open.

3.4 Respondent No.1, thereafter, preferred an application for amendment in the plaint. The said application was also allowed by the trial Court. In Writ Petition No.9801 of 2019, this Court declined to interfere with the said order opining that, it would be open for the Petitioner to raise the issue of limitation at the appropriate stage.

3.5 Eventually, the parties led evidence. After the evidence of the Plaintiff and Defendants was closed, the Plaintiff (R1) sought permission to produce documents. By an order dated 6 February 2026, impugned in WP No.2457 of 2026, the learned Civil Judge was persuaded to allow the application for production of documents observing that the documents which were sought to be produced were certified copies of the affidavits and documents in Civil Misc. Application No.268 of 2017 filed by the legal heirs of Akkatai Patil (D1) for grant of heirship certificate, and, thus, those documents appeared to be

relevant for adjudicating the controversy between the parties. However, permission to adduce additional evidence was not granted by the learned Civil Judge.

3.6 The Petitioner, thereafter, filed an application seeking permission to cross-examine the Plaintiff (R1), in the wake of the order passed by the Trial Court on 6 February 2026 permitting the Plaintiff to produce the documents on record.

3.7 By an order dated 10 February 2026, learned Civil Judge rejected the application observing that, no purpose would be served by allowing Defendant No.9 to cross-examine the Plaintiff as the latter was not the author of the documents which were produced pursuant to the order passed by the Court on the application for production of documents. The said order is assailed in WP No.2458 of 2026.

3.7 On 5 February 2026, the Petitioner avers, the Trial Court framed four additional issues. However, the issue of limitation, which was pressed into service by the Defendant No.9, was not framed by the Trial Court. By an order dated 10 February 2026, the application preferred by Defendant No.9 for framing additional issues of bar of limitation, and absence of a cause of action to institute the suit, came to be rejected. The learned Civil Judge was of the opinion that, though an opportunity was granted to the Petitioner (D9) to raise an issue of limitation, after the amendment was carried out by the Plaintiff (R1), Defendant No.9 did not raise the defence of bar of limitation by

filing an additional written statement to the amended plaint. Thus, it was not necessary to frame the additional issues of limitation and absence of cause of action. WP No.2505 of 2026, calls in question the said order.

3.8 Being aggrieved, the Defendant No.9 has invoked the writ jurisdiction.

4. I have heard Mr. Mayur Khandeparkar, learned Counsel for the Petitioner, and Dr. Warunjikar, learned Counsel for Respondents, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

5. Mr. Khandeparkar submitted that the impugned orders are legally unsustainable. The learned Civil Judge lost sight of the fact that the application for production of documents was filed at the fag end of the trial. No explanation was offered as to why those documents were not produced at an earlier point of time. The provisions contained in Order VII Rule 14 of the Code were observed in breach, while allowing the application for production of the documents at the fag end. The explanation sought to be offered for the non-production of the documents that, it was during the course of the cross-examination of Defendant No.9 that the Plaintiff became aware of those documents, was demonstrably incorrect. The learned Civil Judge committed a grave error in law in allowing the production of documents by observing that Defendant No.9 was confronted with those documents during the course of the cross-examination.

6. Mr. Khandeparkar would urge, even if the Plaintiff's case is construed rather generously and the documents were permitted to be tendered, yet, Defendant No.9 could not have been, under any circumstances, deprived of the opportunity to further cross-examine the Plaintiff. Therefore, the rejection of the application (Exh.216) seeking permission to further cross-examine the Plaintiff, in view of the production of those documents, was wholly unsustainable. The Petitioner was, thus, deprived of the opportunity to effectively defend the suit.

7. Refusal to frame an issue on the aspect of bar of limitation, despite the said issue having been kept open by this Court, was equally unsustainable, submitted Mr. Khandeparkar. Laying emphasis on the fact that, on the oral application of the Plaintiff, as many as four additional issues were framed, Mr. Khandeparkar wold urge that the refusal to frame an issue of limitation when there was a specific pleading in the written statement that the suit was barred by law of limitation, was wholly unjust and iniquitous. Therefore, all the three orders deserve to be quashed and set aside, urged Mr. Khandeparkar.

8. In opposition to this, Dr. Warunjikar, the learned Counsel for the Respondents, would submit that the Defendant No.9 has resorted to dilatory tactics to delay the disposal of the suit. In fact, the last of the three Petitions constitutes the fifth round of challenge before this court. Each and every order passed by the learned Civil Judge is sought to be challenged by

invoking the revisional and writ jurisdiction, and thereby the trial in the suit is protracted. Such procedural orders are not open for interference in an exercise of the limited jurisdiction, submitted Dr. Warunjikar.

9. On the merits of the order permitting production of the documents, Dr. Warunjikar would urge that, what the trial Court has permitted is a mere production of the certified copies of the affidavits filed in Misc. Civil Application No.268 of 2017 for grant of heirship certificate. Those affidavits formed part of the record of the proceedings. The trial Court has not allowed the Plaintiff to lead further evidence. Those documents were not in existence when the suit was instituted, and, therefore, there was no question of production of those affidavits at the time of the institution of suit. Thus, the objection on behalf of Defendant No.9 for the production of the documents was wholly unfounded. The Court would consider the import of the said affidavits at the time of final adjudication. From this standpoint, according to Dr. Warunjikar, the learned Civil Judge was justified in rejecting the application seeking permission to further cross-examine the Plaintiff.

10. On the aspect of bar of limitation, Dr. Warunjikar would urge, as a matter of fact, the Defendants did not file additional written statement. Thus, the learned Civil Judge was well within her rights in observing that Defendant No.9 had not raised the issue of limitation, despite an opportunity. Thus, none of the objections deserve to be countenanced, submitted Dr. Warunjikar.

Writ Petition No.2457 of 2026

11. Under the provisions of Order VII Rule 14 of the Code, where the Plaintiff seeks to rely upon any document, he is enjoined to produce it when the plaint is presented. Sub-rule (3) of Rule 14 of Order VII provides for the production of documents by the Plaintiff at a latter point of time, albeit with the leave of the Court. It provides that the document which ought to be produced in Court by the Plaintiff when the plaint is presented, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. However, the said Rule 14 does not apply to document produced for the cross-examination of the Plaintiff's witness or handed over to a witness merely to refresh his memory. A corresponding provision is made in Order VIII Rule 1A, which proscribes the production of the documents by the Defendant, after the filing of the Written Statement without the leave of the Court.

12. Undoubtedly, the prescription by Rules as to the stage of the production of the documents is with a view to ensure that the adversary is not taken by surprise and the trial is not protracted on account of the production of the documents at an advanced stage, necessitating further controversion and response by the adversary. In both cases, however, a discretion is conferred upon the Court to grant leave to produce the documents at a subsequent stage. The discretion is required to be exercised judiciously. The Court may

not be advised to take a very rigid and constricted view of the matter. The procedure is a handmaid of justice and shall not be allowed to score march over the substantive justice. In a case where a party satisfies the Court that the production of the documents is necessary for a just decision of the case, sub-rule (3) of Order VII Rule 14 and sub-rule (3) of Order VIII Rule 1A provide sufficient discretion to the Court to permit the production of the documents. At the same time, the production of the documents cannot be allowed at a subsequent stage, as a matter of course, lest the aforesaid provisions would be denuded of their meaning and purpose.

13. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of **Sugandhi (dead) by Legal Representatives and Anr. v/s. P. Rajkumar represented by his Power Agent Imam Oli**[1], wherein in the context of the provisions contained in Order VIII Rule 1A of the Code, the Supreme Court enunciated the law, as under :

> "7. Sub-Rule (1) mandates the defendant to produce the documents in his possession before the court and file the same along with his written statement. He must list out the documents which are in his possession or power as well as those which are not. In case the defendant does not file any document or copy thereof along with his written statement, such a document shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit. However, this will not apply to a document produced for cross-

1 (2020) 10 SCC 706

examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory. Sub-rule (3) states that a document which is not produced at the time of filing of the written statement, shall not be received in evidence except with the leave of the court. Rule (1) of Order 13 of CPC again makes it mandatory for the parties to produce their original documents before settlement of issues.

8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straight jacket formula, this leave can be granted by the court on a good cause being shown by the defendant.

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)."

14. In the case at hand, the interdict contained in Order VII Rule 14 may not be strictly attracted as the Plaintiff professed to produce certified copies of

the affidavits affirmed by the purported legal heirs of Akkabai Patil (D1), on 27 June 2017. Those affidavits came into existence much later the institution of the suit. However, the admissibility of those affidavits was a matter which the learned Civil Judge, it seems, failed to take into account.

15. The Plaintiff sought permission to produce the claim Affidavits of Defendant Nos.2, 3, 5 and 6 and Tulsibai Bhagat, Tushar Bhagat and Pratesh Bhagat, who professedly affirmed that Defendant Nos.4 and 5 were the legal representatives of late Krushna Bhagat. In addition, a citation published in the newspaper was sought to be produced.

16. Whether the certified copies of the claim Affidavits in the heirship application could have been permitted to be produced for the reason that they formed part of the record of proceedings in Misc. Civil Application No.268 of 2017, is the moot question.

17. First and foremost, it is necessary to note that the affidavits do not constitute evidence. The Evidence Act, 1872, as well as Bharatiya Sakshya Adhiniyam, 2023, which repealed the Evidence Act, 1872, do not apply to affidavits. On first principles, while adjudicating the suit finally, the Civil Court cannot construe affidavits filed in other judicial proceedings as evidence. The evidence recorded in the earlier proceedings can become relevant only upon the fulfillment of the conditions stipulated in Section 33 of the Indian Evidence Act, 1872. Section 33 of the Act, 1872 reads as under :

> **33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated** - Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case, the Court considers unreasonable :
>
> Provided that the proceeding was between the same parties or their representatives in interest;
>
> that the adverse party in the first proceeding had the right and opportunity to cross-examine;
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> that the questions in issue were substantially the same in the first as in the second proceeding.
>
> Explanation. - A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section."

18. A plain reading of the aforesaid Section would indicate that, it encapsulates the circumstances in which the evidence given by a witness in a prior proceeding, becomes relevant, and the conditions which need to be satisfied to make such evidence relevant. Evidence must have been given by a witness in a judicial proceeding or before any person authorized by law to take it. In a subsequent judicial proceeding or in a latter stage of the same

judicial proceeding, such evidence becomes relevant for the purpose of proving the truth of the facts which such evidence states when

(i) the witness is dead, or

(ii) cannot be found, or

(iii) is incapable of giving evidence, or

(iv) is kept out of way by the adverse party, or

(v) if his presence cannot be obtained without an unreasonable amount of delay or expense.

However, even if any of the aforesaid circumstances are obtained, such evidence does not become relevant, unless the following conditions are satisfied, namely;

(i) first proceeding was between the same parties or their representatives in interest,

(ii) that the adverse party in the first proceeding had a right and opportunity to cross-examine such witness, and,

(iii) questions in issue were substantially same in the first as well as in the second proceedings.

19. The aforesaid Section which makes the evidence of a witness, tendered in a prior judicial proceeding relevant for the purpose of proving the truth of the facts stated therein, is in the nature of an exception to the hearsay rule. However, for clothing admissibility on such deposition in the prior judicial

proceeding, non-availability of the witness ought to be on account of any of the five circumstances enumerated therein, and the further conditions extracted above, need to be fulfilled.

20. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of **Sashi Jena and Ors. V/s. Khadal Swain and Anr.**[2], wherein the Supreme Court expounded the import of the provisions contained in Section 33, as under :

> "7. From a bare perusal of the aforesaid provision, it would appear that evidence given by a witness in a judicial proceeding or before any person authorized to take it is admissible for the purpose of proving in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it states in its evidence given in earlier judicial proceeding or earlier stage of the same judicial proceeding, but under proviso there are three pre-requisites for making the said evidence admissible in subsequent proceeding or later stage of the same proceeding and they are (i) that the earlier proceeding was between the same parties; (ii) that the adverse party in the first proceeding had the right and opportunity to cross examine; and (iii) that the questions in issue in both the proceedings were substantially the same, and in the absence of any of the three pre-requisites afore-stated, Section 33 of the Act would not be attracted. This Court had occasion to consider this question in the case of **V.M.Mathew V/s. V.S.Sharma and Ors.**[3], in which it was laid down that in view of the second proviso, evidence

2 (2004) 4 SCC 236
3 AIR 1996 SC 109

of a witness in a previous proceeding would be admissible under Section 33 of the Act only if the adverse party in the first proceeding had the right and opportunity to cross examine the witness. The Court observed thus at AIR pp. 110 and 111 :-

"8. The adverse party referred in the proviso is the party in the previous proceeding against whom the evidence adduced therein was given against his interest. He had the right and opportunity to cross- examine the witness in the previous proceeding….the proviso lays down the acid test that statement of a particular witness should have been tested by both parties by examination and cross-examination in order to make it admissible in the later proceeding." (emphasis added)

9. Thus, the question to be considered is as to whether accused has any right to cross examine a prosecution witness examined during the course of inquiry under Section 202 of the Code. It is well settled that the scope of inquiry under Section 202 of the Code is very limited one and that is to find out whether there are sufficient grounds for proceeding against the accused who has no right to participate therein much less a right to cross examine any witness examined by the prosecution, but he may remain present only with a view to be informed of what is going on. This question is no longer res integra having been specifically answered by a four-Judge bench decision of this Court in the case of Chandra Deo Singh V/s. Prokash Chandra Bose[4], wherein this Court categorically laid down that an accused during the course of inquiry under Section 202 of the Code of Criminal Procedure, 1898, has no right at all to cross examine any witness

4 AIR 1963 SC 1430

examined on behalf of the prosecution. It was observed thus at page 1432, para 7 :

> “7. "Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person."

21. Following the aforesaid pronouncement, in the case of **Padam Chandra Singhi and Ors. V/s. Praful B. Desai (Dr.) and Ors.**[5], a learned Single Judge of this Court enunciated the law, as under :

> “14. The above section enumerates the cases in which the evidence given by a witness (a) in a judicial proceeding, or (b) before any person authorized by law to take it, is relevant in a subsequent judicial proceeding or a later Page 0802 stage of the same proceeding and can be read in five eventualities, viz.; (a) when the witness is dead; (b) when he cannot be

5 2008 SCC Online Bom 183

found; (c) when he is incapable of giving evidence; (d) when he is kept out of the way by the adverse party; or (e) when his presence cannot be obtained without any amount of delay or expense which the Court considers unreasonable; provided (1) if the proceeding was between the same parties, or their representatives in interest; (2) if the adverse party in the first proceeding had the right and opportunity to cross-examine; and (3) if the questions in issue were substantially the same in the first as in the second proceeding. It is, thus, clear from Section 33 that the evidence of depositions in former trials is admissible. This section is an exception to the hearsay rule.

15. The depositions are in general admissible only after proof that the persons who made them cannot be produced before the Court to give evidence. It is only in cases where the production of the primary evidence is beyond the party's power that secondary evidence of oral testimony is admissible.

16. It is an elementary right of a litigant in civil suit that a witness, who is to testify against him, should give his evidence before the Court trying the case, the adverse party gets an opportunity to cross-examine at the same time so that the Court has the opportunity of seeing the witness and observing his demeanour and can, thus, form a better opinion as to his reliability rather than reading a statement or deposition given by that witness in a previous judicial proceeding or in an early stage of the same judicial proceeding.

17. Where a statute i.e. the Evidence Act, makes provision for exceptional cases where it is impossible for the witness to be before the Court, the Court is expected to be careful to see

> that the conditions on which the statute permits previous evidence given by the witness to be read are strictly complied with. Previous statement of a witness not appearing in Court cannot be taken on record under Section 33 without strict proof of the conditions justifying it before taking it on record."

22. This court has thus held, in clear and explicit terms that, the previous statement of the witness not appearing in Court cannot be taken on record under Section 33 without strict proof of the conditions justifying reception of such evidence before taking it on record.

23. Reverting to the facts of the case, the learned Civil Judge has simply allowed the production of the documents for the reason that those affidavits formed part of the judicial record. The learned Civil Judge, however, lost sight of both the inadmissibility of the affidavits as evidence, as such, and the circumstances under which the evidence tendered in the prior proceedings could become relevant without examining the witness before the Court. If the production of the affidavits is allowed and the trial Court proceeds to consider the said affidavits, it would amount to considering the evidence untested by the cross-examination, which is against the elementary rule of reliability of evidence.

24. For the foregoing reasons, this Court is persuaded to hold that the learned Civil Judge has committed an error in allowing the production of the certified copies of the affidavits in Misc. Civil Application No.268 of 2017 as a

part of evidence on behalf of the Plaintiff.

25. So far as the publication of citation in the newspaper, it being a part of the judicial record in Misc. Civil Application No.268 of 2017, the permission to produce the certified copy of the said citation, can hardly be questioned.

Writ Petition No.2458 of 2026 :

26. In the light of the aforesaid view which this Court is persuaded to take, it may not be necessary to delve into the legality, propriety and correctness of the order dated 10 February 2026, whereby the learned Civil Judge declined to grant the Petitioner an opportunity to cross-examine the Plaintiff. Since this court is inclined to reject the application for the production of the documents to the extent of the affidavits filed in Misc. Civil Application No.268 of 2017, the prayer for cross-examination does not survive.

Writ Petition No.2505 of 2026 :

27. Learned Civil Judge was persuaded to reject the application for framing additional issues with regard to the limitation and absence of cause of action, opining that Defendant No.9 had not filed an additional written statement raising the ground of bar of limitation, though in WP No.9801 of 2019, this Court had opined that, it would be open to the Defendant No.9 to raise an issue of limitation at an appropriate stage. That seems to be the only reason which weighed with the learned Civil Judge.

28. From a perusal of the written statement filed on behalf of the Petitioner

(D9), it becomes explicitly clear that Defendant No.9 had raised the ground that the suit is barred by law of limitation. If the issue arose out of the original pleadings, it was not incumbent upon the Petitioner to again raise the contention by filing an additional written statement, post amendment in the plaint.

29. Incontrovertibly, the Petitioner came to be pleaded as Defendant on 18 July 2016. Written statement was filed on 7 March 2017, raising the contention that the suit was barred by law of limitation. The learned Civil Judge does not seem to have considered the contentions in the written statement while passing the impugned order.

30. In any event, it is the duty of the Court to examine whether the suit has been instituted within the prescribed period of limitation, notwithstanding the absence of pleadings. Section 3 of the Limitation Act, 1963, peremptorily mandates that every suit instituted after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Since Defendant No.9 came to be impleaded on 18 July 2016, the question as to whether Defendant No.9 shall be deemed to have been impleaded on an earlier date, qua the relief against Defendant No.9, in view of the provisions contained in the proviso to Section 21 of the Limitation Act, may also warrant consideration.

31. In the case of **R. Nagaraj (dead) through LRs and Anr. V/s. Rajmani**

and Ors.[6], the Supreme Court emphasised the duty of the Court to ascertain whether the suit has been instituted within the statutory period of limitation. The observations in para 20 read as under :

> "20. Limitation, as we generally know is a mixed question of fact and law. However, there is no hard and fast rule that every question of limitation is to be treated as a mixed question of fact and law. In cases, where the action is initiated after several years after the right to sue accrued, without any pleadings to explain the reasons for delay or as to when the fraud was discovered, the question of limitation is to be treated as a question of law. A recourse may be had to Order VI Rules 4 and 10 CPC, which mandates that specific particulars would have to be given in the pleadings. Once such a plea is raised in the pleadings, then the burden lies on the person to prove that the delay was due to any plausible reason and it is always well within the knowledge of the other party to contend and prove that the opposite party had prior knowledge about the disputed fact and that his right to sue or defend had also accrued by that date. Even in the absence of specific pleadings regarding the limitation in the plaint or a plea of defence, there is a bounden duty on every civil court to ascertain as to whether the lis has been initiated within the time prescribed under law, even if the parties to the lis had not raised any objections. This right flows from the mandate of Section 3 of the Limitation Act, 1963. A useful reference may be had to the judgment of this Court on this aspect, in V.M.Salgaocar

6 2025 SCC Online SC 762

and Bros. V. Board of Trustees of Port of Mormugao[7] wherein it was held as follows :

"20. The mandate of Section 3 of the Limitation Act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex facie barred by the law of limitation, a court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation.

21. This Court in Manindra Land & Building Corpn. Ltd. v. Bhutnath Banerjee [(1964) 3 SCR 495 : AIR 1964 SC1336] held (AIR para 9) :

"Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate court comes to an erroneous decision, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter."

In cases, where the pleadings are silent, then it becomes the duty of the Court to ascertain from the evidence and the overall facts of the case, as pleaded by either party,

7 (2005) 4 SCC 613

> and to render a finding on limitation where the question of limitation is to be treated as a question of law, since the Court cannot entertain frivolous or stale claims. It is also apropos to reiterate the settled position of law that a question of law can be raised at any stage."

32. The conspectus of aforesaid consideration is that the trial Court could not have declined to frame the issue of limitation, especially when on the oral application of the Plaintiff, as many as four additional issues were settled by the trial court on 5 February 2026, on the sole ground that Defendant No.9 had not raised the ground of bar of limitation in the additional written statement, when in the original written statement Defendant No.9 had already raised the ground of limitation.

33. This Court is mindful of the fact that the trial in the suit has been expedited. However, whether the trial court unjustifiably declined to frame the issue which crops up for consideration, an interference with the order becomes necessary so as to obviate further challenges. At this stage, it is necessary to note that, Mr. Khandeparkar, learned Counsel for the Petitioner – Defendant No.9, on instructions, made a statement that Defendant No.9 would not lead any further evidence and would advance final arguments.

34. I am, therefore, inclined to partly allow Writ Petition Nos.2457 of 2026 and 2505 of 2026 and dispose WP No.2458 of 2026.

35. Hence, the following order :

ORDER

(I) (a) Writ Petition No.2457 of 2026 stands partly allowed.

(b) The impugned order dated 6 February 2026 passed below Exh.206 permitting production of the documents stands quashed and set aside in regard to the document Nos.1 to 7 i.e. claim Affidavits of Defendant Nos.2, 3, 5 and 6 and other witnesses in Misc. Civil Application No.268 of 2017.

(c) The Application stands allowed only to the extent of production of document No.8 i.e. citation published in the newspaper.

(II) (a) Writ Petition No.2505 of 2026 stands partly allowed.

(b) Learned Civil Judge shall frame and decide an additional issue : whether the suit is barred by law of limitation ?

(c) The prayer to frame the issue of absence of cause of action stands rejected.

(III) In view of the disposal of Writ Petition No.2457 of 2026, Writ Petition No.2458 of 2026 stands disposed as having been substantially worked out.

(IV) Rule made absolute to the aforesaid extent.

(V) No costs.

(N.J.JAMADAR, J.)

SSP