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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10927 OF 2014

Mr Nalge Construction Company,
B.P.C.L. Dealer at Wajegaon & anr.

..PETITIONERS

VERSUS

Marotrao s/o Baburao Nalge

..RESPONDENT

Mr R.S. Deshmukh, Advocate for petitioners;
Mr Amit A. Mukhedkar, Advocate for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 24th November, 2015

ORAL ORDER :

The petitioners – plaintiffs filed Regular Civil Suit No.590 of 2012, in which after filing of the written statement, an application under Order VIII, Rules 2, 3 and 5 of the Code of Civil Procedure, came to be filed by them, seeking decree in the suit, as according to them, the pleadings raised in the plaint, are not specifically denied. The said application came to be rejected by a detailed order passed by 2nd Joint Civil Judge Junior Division, Nanded, by an order dated 6th November, 2014. Thus, the present petition.

2. Mr Deshmukh, learned Counsel appearing on behalf of the petitioners, while inviting my attention to the pleadings in the plaint, so also the written statement, would urge that in view of absence of specific denial

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to the case put-forth in the plaint, the consequences under Order VIII, Rules 5/1, are required to be followed. According to him, as such the application ought to have been granted.

3. While opposing the application, Mr Mukhedkar, learned Counsel appearing on behalf of the respondent-defendant, would urge that paragraph 3 of the written statement and other pleadings speaks of specific denial and also specific pleadings raised, pursuant to sub-rule (2) of Order V of the Code of Civil Procedure. He would then urge that it is the discretion of the Court, whether to ask the plaintiffs to prove a fact, which is either admitted or not denied, as is provided under sub-clause (2) of Rule 5 of Order VIII of the Code of Civil Procedure. According to him, the petition is liable to be dismissed.

4. With the assistance of the learned Counsel for the parties, I have perused the contents of the plaint, written statement and the prayer made in the application. Though the prayer in the application Exh.58 is vague, yet the learned Trial Court has proceeded to decide the contents raised therein, in the light of requirement of Order V, Rules 2,3 and 5 of the Code of Civil Procedure and has rightly noticed that at appropriate places, there is denial of facts and not only that, but in accordance with Rule 2 of Order V of the Code of Civil Procedure, specific pleadings are raised.

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5. Apart from above, this Court cannot overlook the discretion vested in the Court under clause (2) of Rule 5 of Order V of the Code of Civil Procedure.

6. In view thereof, in my opinion, no illegality could be noticed in the order impugned. Thus, the petition being sans merit stands dismissed, with no order as to costs.

(N.W. SAMBRE, J.)

amj