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

WRIT PETITION NO.11648 OF 2014

Rafiq @ Chhotubhai Razzkali Chamdiya.

Through GPA.

..Petitioner

-Versus-

Rafiq @ Babubhai Razzakali Chamdiya
and others.

..Respondents

.....
Mr.N.B.Suryawanshi, Advocate for the Petitioner.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th January, 2015

Per Court:

1 I have heard Mr.Suryawanshi, learned counsel appearing for the Petitioner for quite sometime. RCS No.139/2013 filed by the Petitioner is pending adjudication. Now it is renumbered as Special Civil Suit No.19/2014. The Written Statement in the matter was also filed. An application Exhibit-48 was filed in October, 2013 by the Respondents praying for framing of the preliminary issues, as to whether, an Arbitrator is competent to deal with the dispute and as to whether, the Trial Court would not have jurisdiction to entertain and try the suit.

2 By the impugned order dated 31.10.2014, the Trial Court has partly allowed the application and has framed an issue as regards whether, the Court has jurisdiction to deal with the said suit. The other prayers of the Respondents were rejected.

3 Mr.Suryawanshi has vehemently submitted that the said issue as framed by the impugned order dated 31.10.2014 could be decided

along with rest of the issues. It is submitted that the practice of adjudicating upon the suit in bits and pieces cannot be appreciated. It is, therefore, prayed that the impugned order being unsustainable deserves to be quashed and set aside.

4 Having considered the submissions of the learned counsel appearing for the Petitioner and having gone through the petition paper book, it appears that no loss or harm of any nature would be caused to the Petitioner if the preliminary issue framed by the Trial Court is adjudicated upon expeditiously. Since it is a jurisdictional aspect and if the dispute could be adjudicated upon by the Arbitrator, then it would be a futile exercise to allow the litigating parties to suffer rigours of litigation. In the event the Arbitrator can be held to be legally competent to decide the dispute, precious time of the Court would be saved, inasmuch as the litigating parties could pursue the said remedy.

5 As such, I am not inclined to interfere with the impugned order. Nevertheless, the litigating parties will be at liberty to address the Trial Court by leading evidence in relation to the said preliminary issue and the Trial Court is naturally expected to decide the said issue on its own merits and in accordance with law. The contentions of the Petitioner as well as the Respondents are, therefore, kept open.

6 Needless to state, the Trial Court shall not be influenced by its observations in the impugned order as well as by any observations made by this Court since this Court has not dealt with the merits of the said issue.

7 This Writ Petition is disposed of with these observations without causing any interference in the impugned order. No order as to costs.

(RAVINDRA V. GHUGE, J.)