

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2930 OF 2015

R. C. Kotiankar	..	Petitioner
VS.		
K. J. Sunnykutty & Anr.	..	Respondents

Mr. Vishal Kanade with Ms Karuna Yadav for Petitioner.

CORAM : M. S. SONAK, J.
DATE : 03 JULY 2015

P.C. :-

- 1] Heard the learned counsel for the petitioner.
- 2] This petition challenges orders dated 13 February 2014 and 17 April 2014 made by the Small Causes Court at Mumbai in L.E. & C. Suit No. 66/71 of 2012.
- 3] The order dated 13 February 2014 dismissed petitioner's application for framing of additional issues on the point of limitation and maintainability. Although, there is no necessity to interfere with the impugned order, it must be noted that under Section 3 of the Limitation Act, 1963, every suit instituted after the prescribed period of limitation is required to be dismissed although limitation has not been set out as a defence. Therefore, irrespective of whether any

issue of limitation is framed or not, it is the duty of the Court, to satisfy itself as to whether the suit as instituted is within limitation or not.

4] The learned counsel however submits that the plaint as filed, discloses no cause of action and therefore, issue of maintainability is required to be framed. This is not a case where the petitioner has applied under Order 7 Rule 11 of the CPC. Further, from the submissions made, it does appear, that the challenge is not really on the ground of maintainability but rather, on the merits of the suit. This is a matter, which will undoubtedly be considered by the trial Court on basis of the pleadings and material on record and the law. There is no necessity to frame any issue for this purpose.

5] The order dated 17 April 2014 has merely permitted the plaintiffs to amend the plaint by incorporating an additional prayer for mesne profits and to clarify the pleadings already on record. The trial Court has observed that such amendment is necessary for the purpose of determining the real controversy between the parties. There is no reason to take any different view.

6] Since, this Court, is today, not interfering with the order dated 17 April 2014, by which the plaintiffs were permitted to amend their

plaint, liberty is granted to the petitioner herein (defendant in the suit) to file additional written statement within two weeks from today in response to the amended plaint.

7] Subject to the aforesaid observations, on the issue of limitation, this petition is dismissed. There shall be no order as to costs.

8] All concerned to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka