

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5076 OF 2015

Endavour Infrastructures & Ors. .. Petitioners
VS.
Sunil Shankar Mahajan .. Respondent

Mr. U. B. Nighot for Petitioners.

CORAM : M. S. SONAK, J.
DATE : 10 AUGUST 2015

P.C. :-

1] Heard Mr. Nighot, the learned counsel for the petitioners.

2] There is no necessity to interfere with the impugned order. The learned trial Court has rightly held that first issue which the petitioners seek having framed stand already covered by issue nos. (i) and (ii) framed by the trial Court on 1 August 2013. The learned counsel for the petitioners submits that the first issue ought to be whether the plaintiff is a tenant in respect of the suit premises and therefore, the trial Court has erred in only framing the issue as to whether the plaintiff proves that his tenancy rights in the suit premises is still in existence.

3] In order to prove that the tenancy rights are still in existence, naturally the plaintiff will have to establish that he is the tenant in respect of the suit premises. Accordingly, the trial Court is right that issue nos. (i) and (ii) indeed cover the issue which the petitioners seek to have cast.

4] In so far as question of limitation is concerned, section 3 of the Limitation Act is clear that it shall be the responsibility of the Court to go into this issue, irrespective of whether or not any parties may have raised it. Accordingly, there is no necessity of framing any issue as such but the non framing of the issue will not absolve the trial Court of its responsibility to go into the question as to whether the suit is indeed barred by limitation or not.

5] On the aspect of non joinder of necessary parties, the trial Court is right that there is no material placed on record by the petitioners to at least *prima facie* indicate who are the necessary parties and in what manner they need to be joined. Accordingly, there is no case made out to frame any issue in the context of non joinder of necessary parties.

6] With the aforesaid clarifications, there is no reason to interfere with the impugned order. This petition is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)