

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11018 OF 2014

Pankaj M. Rambhia .. Petitioner
VS.
M/s. Mani Realty Pvt. Ltd. & Anr. .. Respondents

Mr. S. S. Redij for Petitioner.
Mr. J. V. Parmar and Ms Prachi for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE : 05 AUGUST 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] Even otherwise, this Court, by its order dated 16 July 2015, had made it clear that this petition will be finally disposed of at the stage of admission.

3] The petitioner, by application at Exhibit 23, applied for framing of the following additional issues :

- i) *Whether the suit filed by the Plaintiffs is maintainable?*
- ii) *Whether the Plaintiffs prove that there is relationship of landlord and tenant?*
- iii) *Whether the Plaintiffs prove that the Plaintiff is the owner and landlord of the suit property?*

iv) *Whether the Defendants prove that the suit is barred by res-judicata and/or principle analogous thereto?"*

4] In so far as issue nos. (i) and (ii) are concerned, the trial Court has held that the same are already covered in issue no. 5 which has been cast on 21 December 2013. Issue No. 5 is "*Whether this Court has jurisdiction to try and entertain the present suit?"*

5] Considering the amplitude of the issue, the learned trial Court is right that there was no necessity of framing of issue nos. (i) and (ii). Further, since the issue as to whether there is relationship of landlord and tenant is deemed to be included in issue no. 5 which is already framed, the learned trial Court is right that there is no necessity to frame issue no. (iii). Normally, it is not for the rent Court, to decide issues on title *per se*.

6] The casting of issue no.(iv) has been declined by the trial Court by observing that there are no pleadings. This is not correct. In paragraph 3 of the written statement as also certain other paragraphs of written statement, there is reference to certain previous proceedings and on the basis thereof, it is alleged that the principle of *res judicata* will apply at least qua some of the issues that arise in the matter. Accordingly, this issue ought to have

permitted to be cast. The impugned order is modified and the trial Court is directed to cast issue no. (iv) as aforesaid.

7] In view of the re-cast of issues, the respondent – plaintiff is at liberty to file additional affidavit in lieu of examination in chief. The learned counsel for the parties state that such affidavit has already been filed. Cross-examination is yet to commence. Accordingly, there shall be liberty for the respondent – plaintiff to file additional affidavit in lieu of examination-in-chief within a period of two weeks from the date the issue no. (iv) is cast by the trial Court.

8] Rule is made partly absolute to the aforesaid extent. There shall be no order as to costs.

9] All concerned to act on basis of authenticated copy of this Order.

(M. S. SONAK, J.)