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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRA No. 11 of 2015
Bhimrao v. Sapurda

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.

Court's or Judge's orders.

Mr N. R. Saboo, Adv for applicant
 Mr A. B. Mirza, Adv for respondent

CORAM : A. P. BHANGALE, J

DATED : 10th August 2015

1. Heard learned counsel for the parties. Aggrieved by the order of rejection of his application under Order 7, rule 11 of the Code of Civil Procedure, applicant (original defendant) is before this Court.

2. Rejection of plaint was sought on the ground that the suit was barred by Law of Limitation

3. Learned counsel for applicant contends that issue of limitation, though a mixed question of law and facts, could have been decided as preliminary issue by the trial Court. If that be the contention, defendant could have filed application under Section 9A of the Code of Civil Procedure.

4. Learned trial Judge has rightly relied upon judgment of this Court in **Merit Magnum v. Nand Kumar & ors** reported in **2014 (2) Bom. C.R. 182** wherein it is held that when the issue of limitation is a

mixed question of law and fact, in such situation, plaint could not have been rejected by taking recourse to Order 7, rule 11 CPC.

5. In view of the above, no interference is called for in the impugned order. Revision is dismissed. No costs. Learned counsel for applicant at this stage states that applicant would file application under Section 9A CPC. Applicant may file such application, if so advised.

JUDGE

joshi