

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

CIVIL REVISION APPLICATION NO.99 OF 2014
(Sau. Sangeeta w/o Suraj Jogani ..vs.. Jakir Hussain Arif)

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 06-02-2015

Heard Shri R.S. Parsodkar, the learned Advocate for the applicant. None appears for the non-applicant.

2. The civil revision application is filed by the original defendant challenging the order passed by the trial Court rejecting the application filed by the defendant under Order VII Rule 11 of the Code of Civil Procedure.

3. The defendant filed the application (Exhibit 18) contending that the civil suit filed by the plaintiff is barred by limitation. The learned trial Judge, after examining the challenge raised by the applicant/defendant and examining the pleadings of the non-applicant/plaintiff in the plaint, has concluded that the issue of limitation raised by the applicant/defendant is a mixed question of law and fact and it will be decided at the appropriate stage. The order passed by the learned trial Judge does not suffer from illegality or irregularity

and it cannot be said that the learned trial Judge has failed to exercise the jurisdiction vested in it or has transgressed the limits of his jurisdiction.

4. Shri R.S. Parsodkar, the learned Advocate for the applicant submits that this Court in similar matter in Civil Revision Application No.87 of 2014 has directed the trial Court to frame the issue of limitation as a preliminary issue and to decide it by deferring the decision on the other issues and permitting the parties to lead evidence, if any, in support of their rival claims. Considering the facts of the present case and the provisions of the Code of Civil Procedure which confer jurisdiction on the learned trial Judge to examine as to whether the particular issue can be decided as a preliminary issue or not, I am not inclined to accept the submission made on behalf of the applicant.

5. The civil revision application is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE