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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2855 OF 2016

Sanjay Vijaykumar Darakh
Age - 39 years, Occ - Business
R/o Bungalow No. 25, Cantonment,
Aurangabad

PETITIONER

VERSUS

Mohammed Shukur Sk. Chand
Age - 52 years, Occ - Business,
R/o Kotwalpura, Panchakki Road
Aurangabad

RESPONDENT

.....
Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for petitioner
Mr. Mobin H. Shaikh, Advocate for the respondent
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th MARCH, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The writ petition is by defendant - tenant, who purports to contend that framing of additional issues during hearing of the suit, may cause prejudice to the defendant's case, since these issues had not been framed earlier, neither it can be said that it was in contemplation. As such, the defendant had not cross

examined along the lines of said issues.

3. It appears, there is no dispute about that the suit had reached the stage of hearing and it is after the examination and cross-examination of the parties were over, these issues have been framed.

4. Mr. Mobin Shaikh, learned advocate appearing for the respondent resists the request under the writ petition submitting that as a matter of fact in the examination in chief and even in the pleadings, there are sufficient indications about the issues as are framed, would arise and would be, *inter alia*, the grounds upon which eviction is sought.

5. Mr. Mobin Shaikh relies on a judgment in case of “*M/s Shaddha Associates & Another V. St. Patrick's Town Co-operative Housing Society Ltd., and Others*” reported in 2003 (1) ALL MR 674 and submits that a party has no right to insist upon for being heard in the matter of framing or re-framing of issues by the court and it is obligation of the court and further that issues can be modified at any stage of the suit under Rule 5, Order XIV of the Civil Procedure Code. Perusal of the citation, however, reveals that it was a case decided on different set of facts.

6. Mr. Mustafa, learned advocate appearing for the petitioner,

however, submits that having regard to the stage at which the matter has reached, an opportunity be given to the defendant to give evidence in respect of the issues so framed.

7. Having regard to that the added issues have been framed during hearing of the matter and defendant's request to adduce evidence in respect of those issues, I deem it appropriate and it would be in the interest of justice that such opportunity be given to the parties.

8. In view of the same, the trial court may allow the parties to adduce evidence in respect of the issues so framed on 2nd February, 2016. However, said exercise be done by the parties as expeditiously as possible, preferably within a period of four weeks from the date of receipt of writ of this order. The parties be heard accordingly and suit be proceeded with and decided expeditiously.

9. Writ petition, as such, is disposed of with aforesaid observations / directions. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]