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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11157/2015

Mohan Gulab Nirhali.

...Petitioner..

Versus

Lata Mohan Nirhali & another.

...Respondents...

.....

Shri K.N. Shermale, Advocate for petitioner.

Shri S.K. Shinde, Advocate for respondent no.1.

Respondent no.2 served.

.....

CORAM: T.V. NALAWADE, J.

DATE: 14.09.2016

ORDER :

1] The petition is filed to challenge the order made by the learned Civil Judge, Senior Division, Sangamner Dist.Ahmednagar, on Exhibit 33.

2] Both the sides are heard.

3] The suit is filed by present respondents for reliefs of declaration, maintenance and injunction. It is the case of respondent no.1 – Lata that she is a legally wedded wife of defendant Mohan and two issues are born to her from Mohan. Mohan has denied the relationship. One lady namely Sitabai is also made defendant and relief is

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claimed against her with indirect declaration that she is not legally wedded wife of Mohan.

4] The application was filed by Mohan under the provisions of Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint on two grounds as follows:-

i] In the proceedings filed u/s 125 of the Cr.P.C., the competent Court has already held that Lata has failed to prove her relationship with Mohan as there was no cogent evidence and so she is not entitled to maintenance.

ii] The suit itself is not within limitation in view of provisions of Article 58 of the Indian Limitation Act.

5] The submissions made show that in criminal proceedings filed for maintenance, Lata could not get maintenance and finding of aforesaid nature is given by criminal Court, which is confirmed even by this Court. It appears that one proceeding was filed under the provisions of Domestic Violence Act and it came to be disposed of in the year 2011. Lata has given the disposal of said matter as the cause of action and she

has contended that Mohan and Sitabai have denied the relationship and so the cause of action has taken place.

6] This Court is avoiding to make observations with regard to the effect of the finding given by criminal Court on the existence of relationship. In any case, the plaintiff will be required to prove that the suit is filed within limitation and the limitation will be counted from the date of cause of action. For that, this Court holds that the evidence will have to be adduced and only after that, the Court can decide these points. Further, the relief of maintenance is also claimed and that will have to be decided by the Court, which is independent relief than the relief of aforesaid declaration.

7] In view of these circumstances, this Court holds that it is not possible to interfere in the order made by the learned trial Court.

8] With the aforesaid observations and keeping all the points open, present writ petition stands dismissed.

(T.V. NALAWADE, J.)