

**FARAD CONTINUATION SHEET  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
CIVIL APPELLATE JURISDICTION.**

**WRIT PETITION NO. 6481 OF 2016**

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| Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr. P. M. Bhagat for the Petitioner.

Mr. S.P. Kanuga with Anupam Sharma for the Respondent No.1.

**CORAM : K. K. TATED, J.**

**DATED : 14/06/2016**

**PC.:**

. Not on board. At the request of Advocate for the petitioner, matter is taken on board for urgent orders.

2 By this petition under Article 227 of the Constitution of India, the petitioner original defendant challenges the order dated 13.01.2016 passed by Bombay City Civil Court at Dindoshi below Exhs. 47 & 48 rejecting defendant's application to hear the matter on preliminary issue about the jurisdiction and whether suit is barred under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

3 The learned Counsel for the petitioner submits that the court below erred in coming conclusion that as per Order 14 Rule 2 of Code of Civil Procedure, 1908 all issues are required to be decided. He

submits that defendant specifically raised the objection about the jurisdiction and bar of the suit in written statement. He submits that the defendant filed his application immediately as soon as the issues were framed by the Trial Court. He submits that defendant filed application on 07.12.2015 for following issues as preliminary issues:

1) Whether the defendant proved that this Court has no jurisdiction to try the present suit filed by the plaintiff?

2) Whether the defendant proved that suit is barred under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971?

4 The learned Counsel for the petitioner submits that Trial Court failed to appreciate the fact that once the preliminary issue is decided in favour of the defendant then it is not necessary to lead the evidence on all the issues. Hence, impugned order passed by the Trial Court is required to be set aside.

5 On the other hand, the learned Counsel for the Respondent plaintiff vehemently opposed the present Writ Petition. He submits that the Trial Court has considered all the aspect of the matter and rejected defendant's application below Exhs. 47 and 48.

6 I have heard both the sides at length. It is to be noted that the Trial Court specifically recorded in paragraph 6 of the impugned order that High Court expedited the hearing of the suit. The Trial Court further recorded that the Advocate for the defendant has not raised point of jurisdiction at the time of interim relief. Therefore, application filed by the defendant for preliminary issues cannot be considered. The respondent plaintiff filed their affidavit of evidence on 01.09.2015.

7 Considering these facts, I do not find any reason to interfere the well reasoned order under Article 227 of the Constitution of India.

8 Hence, Writ Petition stands rejected.

**(K.K.TATED, J.)**