

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11988 OF 2016

Mr. Shashi Krishnadeo Gupta	...Petitioner
<i>Versus</i>	
Vidyaben Mafatlal Parikh and Ors.	...Respondents

....
Mr.P.S. Dani, Senior Advocate a/w. Ms. Jui Nerurkar for the
Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 17th OCTOBER, 2016

P.C.

1. Heard Mr. P.S. Dani, learned Senior Counsel for the petitioner.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.2' has challenged the judgment and order dated 10.8.2016 passed by the learned Judge, presiding over Court Room No.37 of the Court of Small Causes at Mumbai (Bandra Branch) below Exhibit-111 in R.A.E. & R. Suit No.1331/4382 of 1983. By that order, the learned trial Judge rejected the application made by defendant No.2 for deleting issues No.2 & 3. Perusal of record shows that the issues were framed on 26.5.2000 and the application is made by defendant No.2 on 27.7.2016 for deleting issues

No.2 & 3. The impugned order also records that the arguments in the suit have commenced on 20.7.2016. While rejecting the application, the learned trial Judge has observed that these issues can be considered at the final hearing of the suit and, therefore, it is not appropriate to delete issues No.2 & 3. In view thereof and for the reasons recorded in the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

3. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of Code of Civil Procedure, 1908.

(R. G. KETKAR, J.)