

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION (ST) NO. 25509 OF 2016

Shri Mahendra Bansilal Mutha	... Petitioner
v/s	
Shri Atul Vallabh Benke & ors.	... Respondents

Mr.P.M.Arjunwadkar for the petitioner.

Ms.Manjiri Parasnis for the respondent Nos.1 to 4.

Coram: N.M. Jamdar, J.

Dated: 19 September 2016

P.C.:

Not on board. Taken on production board in view of the *praecipe* filed by the Petitioner.

2 Heard learned counsel for the parties.

3 The Petitioner has challenged the order passed on 9 August 2016 by the learned Civil Judge, Senior Division, Khed-Rajgurunagar, rejecting the application taken out by the Petitioner for framing additional issues. The issues sought to be framed by the Petitioner are regarding genuineness and bonafide of certain documents, whether the suit is maintainable since certain terms of

lease have not been complied with, and whether there are non-joinder of necessary parties.

4 Though the learned Civil Judge while rejecting the application has gone on merits of the rival contentions, the said view will have to be considered as a *prima facie* view as even though issues are not so framed, it does not preclude the parties from advancing of such arguments in furtherance of their pleadings and lead evidence. Framing of an issue is to draw the attention of the parties at the controversy involved and merely because the particular issue is not framed does not mean that the parties cannot advance their arguments in furtherance of their case. Therefore, though the learned Civil Judge has rejected the application for framing the issues, the Petitioner is not precluded from advancing of contentions that are available as regarding the subject matter of issues sought to be framed. Keeping all contentions of the parties open in that regard, the writ petition is disposed of.

(N. M. Jamdar, J.)