

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10562 OF 2015**

Shri Bholenath Bansraj Yadav

..Petitioner.

Vs

Smt. Champa wd/o Rajendra
Singh & Ors

.. Respondents

Mr. V.T. Lulia, Advocate for Petitioner.

Mr. J.P.Singh a/w Mr R.S.Maurya, Advocate for Respondents no. 1
to 4.

**CORAM : R.G.KETKAR,J.
DATE : 05/07/2016**

PC:

1. Heard Mr. V.T. Lulia, learned counsel for the petitioner and Mr. J.P.Singh, learned counsel for respondents no. 1 to 4 at length. On the oral application made by Mr. Lulia, leave to delete respondent no.5 is granted. Amendment shall be carried out forthwith.

2. Rule. Mr. Singh waives service on behalf of respondents no. 1 to 4. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up finally.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 19.11.2009 passed by the learned Judge presiding over Court Room no.36 of the Small Causes Court at Mumbai (Bandra

Branch) below Exhibit-7 in Misc. Notice No.162 of 2007 in R.A.E.&R. Suit No. 784 of 1993 as also the Judgment and order dated 14.09.2015 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No. 3 of 2010. By these orders, the Courts below dismissed the application Exhibit-7 made by the petitioner for framing following preliminary issue:

“Whether the application is filed within limitation, is maintainable?

4. Mr. Singh states that respondent no.3-Ajay Kumar Singh is present in the court. Upon taking instructions from him, he states that by consent of respondents no. 1 to 4, the impugned orders may be set aside and Application Exhibit-7 may be allowed.

5. In view thereof by consent of the parties, the impugned orders are set aside. Application Exhibit-7 is allowed. The learned trial Judge will decide the preliminary issue extracted herein above in accordance with law. All contentions of the parties on merits in that regard are expressly kept open.

6. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)