

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

WRIT PETITION NO. 12123 OF 2016

M/s Royal Distillery Pvt Ltd

..Petitioner.

Vs

Smt. Somaibai wd/o Late Shri
Maugi Bica

.. Respondent

Mr.F.E.Devitre, Senior Advocate, S/S Nilesh Modi, Utsav Ghosh,
i/b Rustomji Ginwala , Advocates for Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 02/12/2016

PC:

1. Not on board. At the request of Mr. Devitre, taken up in production board. Heard Mr. F.E.Devitre, learned senior counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 10.8.2016 passed by the learned Principal District Judge-3, Diu in Regular Civil Appeal No.3 of 2014. By that order, the learned District Judge allowed the Appeal preferred by the respondent-plaintiff and quashed and set aside the Judgment and order dated 4.4.2014 passed by the learned trial Judge in R.C.S.No.27 of 2013 and remitted the matter to the trial Court to proceed with the suit in accordance with law.

3. The learned trial Judge has rejected the plaint under Order VII, Rule 11 (d) of C.P.C on the ground that the suit is barred by law of limitation. As against this, the learned District Judge held

that the suit is not barred by law of limitation and set aside the trial Court's order and remitted the matter to the trial Court.

4. Perusal of the impugned order shows that the learned District Judge has passed the order which is referable to Order 41, Rule 23 of CP.C In view of order 43 Rule 1(u) r/w Section 104 of C.P.C., the petitioner has an equally, efficacious, alternate statutory remedy of filing Appeal from order. In view thereof, petition is allowed to be withdrawn with liberty to adopt appropriate proceedings. it is made clear that I have not examined merits of the case.

5. Mr. Divetre states that the next date of hearing before the trial Court is 8.12.2016. In view thereof, liberty is reserved to the petitioner to file application for adjourning the matter upto 15.12.2016. If such application is made, the learned trial Judge will adjourn the hearing beyond 15.12.2016. Order accordingly.

(R.G.KETKAR, J.)