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

WRIT PETITION NO. 12379 OF 2015

Ramesh Ishwarlal Umarvanshi and Ors. ... Petitioners.

V/s.

Asha Umesh Yadav and Ors. ... Respondents.

Ms. Jyoti Sanap i/b. G.N. Pandit for the Petitioners.

CORAM : N.M. Jamdar, J.

10 October, 2016.

Oral Order :-

The Petition is kept for disposal today. Heard the learned Counsel for the Petitioners.

2. The Petitioners challenge the order passed by the learned City Civil Court Judge rejecting the application taken out by the Petitioner for framing an additional issue. The Petitioner is a Defendant. The Petitioners sought to be frame an additional issue regarding as to whether the Respondent – Plaintiff has proved the agreement in question and that is valid, subsisting and binding. The

learned Judge, while rejecting the application has noted that it is a third time an application is made to frame the issue and the trial has substantially proceeded. Even otherwise the learned City Civil Court Judge has held that for every fact being in dispute is not necessary to frame an issue. Whether the agreement is subsisting, valid or binding will be considered at the time of trial after hearing both the sides. Therefore, even that the additional issue is not framed, it will not prejudice the Petitioners as all contentions of the Petitioners are kept open even in the impugned order. The Petitioner can always argue such points that are available in furtherance of the pleading or the evidence that is led. The primary reasons for framing an issue to focus the attention of the parties to the controversy involved and it does not mean that if an issue is not framed, argument cannot be advanced. No prejudice will be caused to the Petitioners as all contentions of the Petitioners are kept open.

3. In the circumstances, it is not necessary to interfere with the impugned order. It is clarified that all contentions of the parties are kept open and the observations made by the learned Judge in the impugned order will have to be treated as prima-facie. Writ Petition is disposed of.

(N.M. Jamdar, J.)