

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 838 of 2017**

Gulam Mohammad, S/o Late Bali Mohammad, aged about 46 years, resident of Mahagawn, Surajpur, District Surajpur (C.G.)

---- **Petitioner**

Versus

1. Sabra Begum, D/o Late Bali Mohammad, aged about 61 years, R/o Mahagawan now residing at R/o Lehsui (Kotma), Tahsil & District Mahagawn, Surajpur, District Surajpur (C.G.)
2. State of Chhattisgarh through Collector, Surajpur (C.G.)

---- **Respondents**

For Petitioner : Mr. Sushil Dubey, Advocate.
For Respondent No. 2/State: Mr. Arun Sao, Dy. Advocate General & Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/11/2017

Heard.

(1) By the impugned order dated 17.10.2017, the trial Court has directed to decide the issue with regard to pecuniary jurisdiction as a preliminary issue, against which instant writ petition has been filed questioning the same.

(2) Learned counsel for the petitioner would submit that the impugned order passed by the trial Court is contrary to the decision rendered by this Court in Civil Revision No. 29 of 2016 {***Gyan Ganga Education Academy & another Vs. Smt. Suman Dheer & others***) decided on 05.08.2016.

(3) On the other hand, counsel for the State supported the impugned order.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(5) The petitioner/defendant and the respondent No.1/plaintiff both have prayed that issue with regard to pecuniary jurisdiction has to be decided by the trial Court at the time of final hearing whereas the trial Court has directed to decide the said issue as a preliminary issue.

(6) This Court in Civil Revision No. 29 of 2016 (***Gyan Ganga Education Academy & another (supra)***) decided on 05.08.2016 has held as under:-

“16. A comparison of Rule 2 prior to the amendment and as it presently stands now, leaves no manner of doubt that the Legislature in its wisdom has brought about a radical change. Under unamended Rule 2, a duty was cast upon the Court to first decide the issues of law only and postpone the settlement of issues of fact until after the issues of law have been determined and decided. Now, the position is just reverse. The Court under sub-rule (1) of Rule 2 is bound to pronounce judgment on all issues even if the case can be disposed of on the basis of preliminary issue. Subrule (2) as now incorporated mandates that if the Court is of the opinion that the case or any part thereof may be disposed of on a issue of law only, it may try that issue first. This is, however, subject to two conditions; firstly that the issue relates to jurisdiction of the Court or secondly the issue relates to a bar to the suit created by any law for the time being in force. Therefore, the only issues which can be treated as preliminary issues are the issues relating to jurisdiction of the Court and the issue relating to bar of the suit created by a statute. No other issue can be treated as a preliminary issue. Another

aspect of this rule is that if the Court forms an opinion that it can dispose of the suit only on the basis of a finding given on a preliminary issue, it should postpone settlement of other issues until after that issue has been determined. What law enjoins is that all issues should not be framed and only issues which can be treated to be preliminary issues in terms of sub-rule (2) should be framed. Even if one was to take slightly more flexible view, it would only mean that when all issues are framed on that very day the Court must determine which of the issues, if any, are to be treated as preliminary issues within the meaning of sub-rule (2) and proceed to treat them as preliminary issues.”

(7) In view of the aforesaid legal proposition of law and the submissions made by the parties that the issue with regard to pecuniary jurisdiction should be decided at the time of final hearing, I am of the opinion that this issue be decided at the time of final hearing along with all other issues.

(8) Thus, the impugned order dated 17.10.2017 is set aside. The trial Court is directed to decide all the issues including issue of pecuniary jurisdiction at the time of final hearing. However, if the respondent No.1 feels aggrieved, he may approach this Court for modification/alteration of the order as passed by this Court.

(9) The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

