

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2215 OF 2015

Vaishali w/o Premchand Shelke
age 39 years, occ. Service
r/o c/o Uttamrao s/o Sopanrao Lokhande
(Retired Dy.S.P.)
R/o House no. 122, N-6, CIDCO
Sai nagar, Aurangabad
Tq. & Dist. Aurangabad.

Petitioner

Versus

Premchand s/o Bajrang Shelke
age 42 years, occ. Labourer
r/o Chaitanya nagar, Nanded
Tq. & dist. Nanded

Respondent

Mr.R.S.Deshmukh, advocate for the petitioner.
Mr.Rahul Awsarmol, advocate for the Respondent.

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CORAM : S.B.SHUKRE, J.

DATE : 14th FEBRUARY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard finally by consent of learned counsel for the respective parties.
3. On going through the impugned order dated 5th December, 2014, rejecting the application filed by petitioner for framing preliminary issue in terms of section 9A of the Code of Civil Procedure, I find that there is no scope for making any interference in the order for the simple reason that the stage of framing of

preliminary issue under section 9A of the Code of Civil Procedure had already been crossed with the framing of issues regarding jurisdiction of the Court as an additional issue. But, when the issue so additionally framed, pertains to the jurisdiction of the Court or a bar to a suit granted by any law for the time being in force, the Court can still proceed in the matter by following the provisions of Order XIV Rule 2 of the Code of Civil Procedure. The provisions of Rule 2 Order XIV of the Code of Civil Procedure confer power upon the Court to decide preliminary issue which relates to jurisdiction of the court or bar created by any law for the time being in force and postpone the settlement of other issues until the preliminary issue is determined. The discretion in this regard has been granted to the trial Court and, therefore, this petition can be disposed of by only observing that the trial Court may appropriately consider this aspect of law.

4. Accordingly, writ petition is dismissed with observation that the trial Court may follow the procedure contained in Rule 2 Order XIV of the Code of Civil Procedure. Rule discharged. No costs.

S.B.SHUKRE
JUDGE

dyb