

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1084 OF 2017

Bank of Baroda

...Petitioner

Versus

M/s. Rajabally Trust & Anr.

...Respondents

Dr. Abhinav Chandrachud, i/b Goenka Law Asso., for the
Petitioner.

Mr. R.J. Merchant, Sole Trustee for Rajabally Trust, present in
Court.

CORAM : N.M. JAMDAR, J.

DATE : 24 January 2017

ORDER :

1. Not on board. Taken on production board by way of
praecipe.
2. Heard the learned Counsel for the Petitioner and
Sole Trustee of the Respondent-Trust.
3. By the impugned order, the learned Small Causes
Court, Judge has not framed certain issues as sought for by the
Petitioner.

4. I have gone through the additional issues, which are sought to be framed. The position of law is settled that merely because a issue is not framed, parties are not precluded from putting forth all such arguments which are available to them as per law and also to lead evidence, if there are sufficient pleadings to that effect. The order passed in interlocutory. It is not for correcting every error, assuming there is one, that the power under Article 227 of the Constitution of India is to be exercised. There is no prejudice caused to the Petitioner by the impugned order as none of rights of the Petitioner are affected by non framing of the additional issues. Therefore, keeping all the contentions of the parties on merits open, the Writ Petition is disposed of.

5. The Respondent states that the trial of the Suit be expedited. It is open to the Respondent to make a request to the learned Small Causes Court, Judge, who will consider the same as per the time schedule available.

6. It is also clarified that since the impugned order is interlocutory, observations made therein will have to be treated as *prima facie*.

[N.M. JAMDAR, J.]