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

WRIT PETITION NO. 11565 OF 2017

Sher Ali Karim and anr	...	Petitioners
V/s.		
Santosh Raman Patel	...	Respondents

Mr. Ketan Chaudhari I/by Ms/ Manjiri S.
Parasnis, for the Petitioners
Mr. Rakeshkumar R. Tiwari, for the
Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for petitioners and learned counsel
for the respondents.

2] By this petition filed under Article 227 of the Constitution
of India, the petitioners are challenging the order passed by the Court
of City Civil and Sessions Court, Mumbai, thereby disposing of the
Notice of Motion No.2060 of 2016 in S.C. No.489 of 2006, filed by the
petitioners, contending inter- alia that the suit filed by the respondent
was beyond the pecuniary jurisdiction of the said Court and hence
plaint must be returned to the Respondent for filing before
appropriate Court.

3] By order dated 4th August, 2017 the trial Court held that as the suit is filed in the year 2006 and present Notice of Motion is moved in the year 2016 when the matter is ripe for hearing, it would be just to frame following additional issues to be decided at the time of hearing of the suit.

1. Do the defendants prove that the suit is beyond the pecuniary jurisdiction of the Court?
2. Whether the suit is properly valued for the purpose of Court fee?

4] According to learned counsel for the petitioners, the trial Court has vide its order dated 22nd February, 2016 already held that the plaintiff is seeking possession of suit premises, but he has not valued the suit for possession. Hence it is submitted that, if the trial Court has already arrived at a finding that the suit is not properly valued, the issue to that effect should not have been framed by the trial Court.

5] As regards pecuniary jurisdiction, it is submitted that on own showing of the respondent plaintiff in his affidavit-in-reply, apparently the suit is beyond the pecuniary jurisdiction of the trial Court and hence the trial Court should have returned the plaint.

6] In the considered opinion of this Court, what is correct

valuation of the suit claim for the purpose of deciding the pecuniary jurisdiction of the Court needs to be decided by the trial Court at the initial stage itself and it can be decided at preliminary stage by framing preliminary issue to that effect instead of allowing the said issue to be decided at the time of trial.

7] Hence the impugned order passed by the trial Court is modified to the extent that the trial Court is directed to decide following issues as preliminary issues:-

1. What should be the correct valuation of the suit claim?
2. If correct valuation is made, whether the trial Court has pecuniary jurisdiction to decide the suit?

8] The trial Court is directed to decide both these issues as preliminary issues as expeditiously as possible and in accordance with law.

9] The parties are at liberty to lead their respective evidence in support of their contentions.

10] The writ petition is disposed of in above terms.

11] The parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]