

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION No. 127 OF 2017

Satish Shankarrao Patil	... Applicant
Vs.	
Phiroz Gulamali Shaikh	... Respondent

Mr. S.S. Patwardhan, Advocate for the Applicant.
Mr. R.S. Kate, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 28th June, 2017.

P.C.:

This Civil Revision Application is directed against the order dated 16th June, 2016 passed by 2nd Joint Civil Judge Senior Division, Baramati below Exhibit 13 in Special Civil Suit No. 135 of 2013. The petitioner, who is defendant in the said suit, has moved an Application under Order 7 Rule 11 and under section 9(a) of Code of Civil Procedure that the suit is not maintainable for the mandatory compliance under sections 159, 160 and 161 of the Maharashtra Police Act. The suit is barred by limitation and also for non-compliance of proper notice.

2. Perused the Application dated 20th February, 2014 and impugned order dated 16th June, 2016. The said application was pending for two years on the file of Civil Judge Senior Division. While deciding the said

Application, the learned Judge has not considered any aspect under sections 159, 160 and 161 of Maharashtra Police Act. The learned counsel, on query, has submitted that the said defence of limitation and maintainability is also taken in the written statement.

3. The learned counsel for the respondent and the applicant both have informed that today the evidence of the plaintiff/respondent is over. The affidavit-in-chief of the defendant/applicant is filed and defendant has to enter the box for cross-examination. Under such circumstances, following order is passed:

- (i) The order dated 16th June, 2016 is hereby set aside.
- (ii) The trial Court shall frame two issues - (i) on the point of limitation; and (ii) on the point of notice required under section 161 of Maharashtra Police Act.
- (iii) The parties are allowed to lead their evidence to that extent.
- (iv) The trial Court after framing the issue, proceed to record the evidence and shall answer the issue finally;
- (v) The learned trial Court to act on authenticated copy of this order and to proceed.

(MRIDULA BHATKAR, J.)