

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

26. WRIT PETITION NO. 12132 OF 2018

Kumar S/o Narayanrao Prayag and another	...	Petitioners
Versus		
Sridhar S/o Vishnudas Jadhav and others	...	Respondents

Mr. V.V. Bhavthankar, Advocate for petitioners

Coram : N.M. Jamdar, J.

Date : 19 November 2018.

OAL ORDER :

1. By this writ petition, the petitioners have challenged order passed by the learned Joint Civil Judge (Senior Division), Latur, framing the preliminary issues. Two preliminary issues have been framed as under :

- “ 1. Whether suit discloses cause of action ?
- 2. Whether suit is barred by law ? ”

2. Learned Counsel for petitioners submits that in the application only bar of law that has been shown, is of limitation, which is mixed question of law and fact and it should not be tried as

a preliminary issue. As regards the second issue is concerned, it is stated that sufficient cause of action has been stated.

3. The main consideration that has to be kept in mind while exercising power under Article 227 of the Constitution of India is, whether any failure of justice has occasioned. It is not that for every error this jurisdiction is to be invoked. If the petitioners are right in contending that sufficient cause of action has been disclosed, the issue will be decided in their favour. It is to be noted that the learned Judge has not framed the issue on limitation, but has only framed an issue, as to whether the suit is barred by law. On this issue, petitioners can advance all their contentions including one advanced before this Court. In view of this position, no interference is warranted in the impugned order. The petition is accordingly rejected.

N.M. Jamdar, J.