

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

WRIT PETITION NO. 12535 OF 2018

NANDKUMAR GOPALRAO BENDALE
VERSUS
RAMSING NARAYAN PATIL THROUGH LRS RATNABAI
RAMSING PATIL AND OTHERS.

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Advocate for Petitioner : Mr V D Hon Sr Counsel i/b A V Hon
Advocate for Respondent 1 : Mr Rane Girish S.

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CORAM : N.M. JAMDAR, J.

Dated : 21 November 2018

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ORAL ORDER :-

Heard learned counsel for the parties.

2. The controversy in this petition appears to be that the application filed below exh.90 which was taken up pursuant the suit and was directed by this court in the order dated 21.1.2014 in writ petition no.9765 of 2013 to be heard alongwith the suit, whether was rejected by the impugned order.

3. The learned counsel for respondent no.1 submitted that

this application has not been rejected, but what is rejected is the request of the petitioner to take the same even before hearing of the suit. The learned Senior Advocate for the petitioner submitted that the impugned order reads that this application stands rejected and to ascertain whether the respondent is indigent person, an enquiry is contemplated under the Civil Procedure Code.

4. It appears that suit is at the final stage. This Court has already opined that application is to be decided at the time of the hearing of the suit. The learned judge erroneously mentioned that the application is rejected as it is without considering it on merits. Learned Civil Judge will accordingly take up application exh.19/90 alongwith the hearing of the suit, since any way the suit is at the final stage of conclusion. If a methodology is laid down under the Code for deciding such an application, it is obvious that it will have to be followed. Clarifying above position, writ petition is disposed of.

5. As far as application regarding issue of limitation is concerned, since this Court earlier has opined that an issue in respect of indigent person has to be heard alongwith the main suit. It is the contention of the respondent that it is a mixed question of law. It is thus appropriate that this issue is also heard alongwith final hearing of

the suit. With these clarification, writ petition is disposed of.

(N.M. JAMDAR, J.)

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