

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.12424 OF 2016

M/S SHALAKA ENGINEERS THROUGH ITS PARTNER  
SUVARNA SUNIL RAKHA  
VERSUS  
MUNICIPAL CORPORATION AURANGABAD

...  
Advocate for Petitioner : Mr. A.S. Bajaj h/f Mr. Aditya N. Sikchi  
Advocate for Respondents : Mr. S.S. Tope  
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CORAM : N. M. JAMDAR, J.  
DATED : 6 DECEMBER 2018

**PER COURT:-**

1. By this petition, the petitioner has challenged the order dated 17 November 2016, passed by the learned Civil Judge, Senior Division (Corporation Court), thereby allowing the application filed by the respondent Corporation to frame the issue of limitation as 'preliminary issue'.

2. The learned Civil Judge, Senior Division, has observed that the issue No.1 i.e. jurisdiction of civil court in view of arbitration clause No. 13 of the agreement, involves mixed question of facts and law. After specifically recorded so, the learned Civil Judge, Senior Division has framed the issue of jurisdiction as 'preliminary issue'. The observations made by the learned Judge in the operative part of the order are self contradictory. The learned Civil Judge, Senior

Division, having found the issue as mixed question of facts and law, has framed the issue as 'preliminary issue'. This is clearly against the dictum of the Apex Court in the case of ***Ramesh B. Desai and others vs. Bipin Vadilal Mehta and others, reported in (2006) 5 SCC 638***. In fact, in the reply filed by the respondent, the respondent Corporation has also taken a stand that it is mixed question of facts and law.

3. The respondent has filed written statement and in the written statement the respondent has not taken a plea regarding arbitration clause so as to attract Section 8 of the Arbitration Act. Copy of written statement is placed on record so also the decision of the Apex Court in the case of ***Sukanya Holdings (P) Ltd. vs. Jayesh H. Pandya and another, reported in (2003) 5 SCC 531***.

4. In this circumstance, the order passed by the learned Civil Judge, Senior Division (Corporation Court), treating the issue No.1 as 'preliminary issue' will have to be set aside. The issue No.1 as framed, will be decided alongwith the other issues that have been already framed on 16 September 2016.

5. The writ petition is accordingly allowed in the above terms.

6. Interim order is vacated. Considering the fact that the proceedings of the civil suit is stayed since the year 2016, the learned

Civil Judge, Senior Division (Corporation Court), will give priority for the disposal of the suit.

( N. M. JAMDAR, J.)

rlj/