

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1146 OF 2017
WITH
WRIT PETITION NO.1147 OF 2017

PRALHAD GOPAL PHALAK
VERSUS
REKHA DILIP PAWAR AND OTHERS

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Advocate for Petitioners : Shri Talhar Ajay G.
Advocate for Respondent 1 : Shri Nagori Girish
Advocate for Respondents 2 & 3 : Shri Deshmukh A.I.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 04, 2018

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PER COURT :-

1. In these petitions, the trial Court has passed an order on 19.10.2016, rejecting Exhibits 17 and 21 filed by the defendant for framing a preliminary issue. However, prior to the passing of the said order, the learned Judge has passed an order below Exhibits 17 and 21 framing an issue, in RCS No.488 of 2014 and in RCS No.487 of 2014.

2. I have heard the learned Advocates for the respective sides at length.

3. It is apparent that the trial Court has framed a preliminary

issue in both these suits as under:-

“ Whether this suit is barred by any law?”

4. I need to record my astonishment with reference to the issue framed by the trial Court. When the original defendant No.1 has specifically raised the issue that the suits are barred by the law of limitation, the trial Court was expected to frame an issue specifically for the purpose of scrutinizing whether the suits are barred by the law of limitation.

5. Considering the above, both the petitions are partly allowed. The orders dated 4.8.2016 and 19.10.2016, below Exhibits 17 and 21, in RCS Nos.488 and 487 of 2015, respectively are quashed and set aside. Both the applications Exhibits 17 and 21 are restored in the respective suits.

6. The litigating sides would address the trial Court with regard to the specific objection raised and the trial Court shall thereafter, decide both the applications on their own merits. It is made clear that if the trial Court is convinced that an issue needs to be framed with regard to the maintainability of the suits, it shall do so by framing an issue with reference to the specific objection.

7. It is made clear that this Court has only expressed its displeasure as regards the issue framed and has not expressed any opinion as to whether any issue should be framed and whether such an issue should be considered peremptorily by the trial Court.

(RAVINDRA V. GHUGE, J.)

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