

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 WRIT PETITION NO. 6801 OF 2017

BHAGWAN PARASRAM DABHADE
VERSUS
KAMLA MOHAN GHUSALE AND ANOTHER

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Advocate for Petitioner : Mr. Dodya S.G.
Advocate for Respondent No.1 : Mr. S. S. Panale
Advocate for Respondent No.2 : Mr. S. V. Kurundkar

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CORAM : V. K. JADHAV, J.
DATED : 04th APRIL, 2018

PER COURT:-

1. By consent of the learned counsel appearing for the parties, the matter is remanded to the trial Court.
2. It appears from the impugned order that the trial court has erroneously observed that the issue of limitation being mixed question of facts and law, falls within the purview of jurisdiction and has to be decided as preliminary issue under Section 9-A of the Code of Civil Procedure Code. The respondent/original defendant no.1 has filed an application exhibit 18 under Order 7 Rule 11 of C.P.C. and the plain meaning of that rule seems to be

that if any of the defects mentioned therein found to exist in any case, the plaint shall be rejected as a whole. In the instant case, the trial court has unnecessarily given reference to the provisions of Section 9A of C.P.C. and directed to frame preliminary issue below exhibit 1 which pertains to the limitation and whether there is any cause of action to file the suit. It is also a part of record that till filing of the said application exhibit 18, the respondent/defendant no.1 has not filed his written statement. The trial court has also not considered the same.

3. In view of the above, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby partly allowed. No costs.
- II. The impugned order dated 07.11.2016 passed below exhibit 18 in R.C.S. No.102 of 2016 by the 2nd Jt. Civil Judge, Junior Division, Aurangabad, is hereby quashed and set aside.
- III. The trial court shall decide the application exhibit 18 afresh after giving an opportunity of being heard to both the parties as expeditiously as possible,

preferably within a period of three months from today.

IV. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

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