

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.200 OF 2018

Mrs.Latabai Vijaykumar Shewale	.. Petitioner
Vs.	
Jibhau Narayan Shewale & Ors.	.. Respondents

Mr.Akhil Kupade i/by Manoj Harit & Co. for the petitioner.
Mr.Amitkumar D. Sale for the respondent no.1.

CORAM : R.D. DHANUKA, J.
DATE : 23rd October 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner (original defendant) has impugned the order dated 20th December 2017 below Exhibit-132 rejecting the application filed by the defendant under Order XI Rule 12 of the Code of Civil Procedure, 1908 for discovery of documents moved by the petitioner.

2. A perusal of the order dated 20th December 2017 clearly indicates that the said application is rejected mainly on the ground that the provision under Order XI Rule 12 of the Code of Civil Procedure, 1908 was not applicable in view of the said provision having been substituted by the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short “the said Act”).

3. It is not in dispute that the Court of 4th Joint Civil Judge, Junior Division, Malegaon has not been designated as the Commercial

Court under the provision of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Even otherwise the learned counsel for the original plaintiff could not point out that on the basis of the nature of relief sought in the plaint and the amount of claim involved, the same would fall under any of the categories prescribed under Section 2 of the said Act.

4. In my view, since the impugned order passed by the learned trial Judge shows perversity, the same is quashed and set aside. Application (Exhibit-132) is restored to file. The learned trial Judge shall consider the said application on its own merits without being influenced by the observations made in the impugned order after hearing both the parties. The learned trial Judge shall decide the said application within four weeks from the date of communication of this order. Both the parties are directed not to seek unnecessary adjournment in the matter. Writ petition is allowed in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.