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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11745 OF 2016

Prabodh Artha Sanchay Pvt. Ltd.	...Petitioner
V/s.	
Ashok L. Lunkad	...Respondent

Mr.Sushil Nimbkar for the Petitioner.

Ms.Jyoti D. Awhad for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 15TH OCTOBER, 2018.

P.C. :-

1. The petitioner (original plaintiff) has impugned the order passed by the learned Trial Judge framing a preliminary issue i.e. as to whether the suit is maintainable on an application filed by the defendant in a summary suit. The suit is of the year 2009. No application has been filed by the defendant so far seeking leave to defend. The defendant has been filing several applications before the learned Trial Judge.

2. The impugned order passed by the learned Trial Judge framing the preliminary issue is accordingly quashed and set aside. The defendant is directed to file the application for leave to defend within two weeks from today and a copy thereof shall be served upon

the plaintiff's advocate simultaneously. It is made clear that no further extension of time would be granted. The issue of jurisdiction, if any, can be raised by the defendant in such application for leave to defend. The learned Trial Judge shall consider the defence of the defendant and shall pass appropriate order whether the defendant shall be granted leave to defend unconditionally or upon imposing certain terms.

3. If any such application for leave to defend is filed by the defendant, the trial Court shall dispose of the same within two months from the date of filing such application. If no such application is filed by the defendant within the time prescribed as aforesaid, the learned Trial Judge shall proceed with the said suit ex-parte.

4. The writ petition is disposed of in aforesaid terms. It is made clear that this Court has not expressed any views on the merit of the matter.

5. The petitioner is directed to convey this order to the learned Trial Judge for record and compliance.

6. All the parties as well as the learned Trial Court to act on the authenticated copy of this order.

Vasant
Anandrao
Idhol

Digitally signed by
Vasant Anandrao Idhol
Date: 2018.10.17
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(R.D. DHANUKA, J.)