

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

**APPEAL FROM ORDER (STAMP) NO.15334 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.15335 OF 2018**

Rampyare Bhagwatidin Sharma

..Appellant

vs.

Anaribai Ramnihore Sharma & Ors.

...Respondents

Mr.Kishore Tembe i/b Mr. Amol K. Tembe for the Appellant.

Mr.Surya Das i/b Mr. R. R. Sharma for the Respondents.

CORAM : V. M. DESHPANDE, J.

DATE : 6th JULY, 2018

P.C.:

. Heard learned counsel for the parties. By the present proceedings the appellant is challenging the order passed by learned Judge of City Civil Court, Mumbai on 23/4/2018 in Notice of Motion No.3511/2015 in Suit No.2971/2010 by which the Court below has directed the present applicant to give in writing whether he wants to lead any evidence or not in support of preliminary issue on the next date so that the matter can be proceeded expeditiously for proper adjudication of the matter.

2. The appellant before this Court is the original defendant No.1. In the suit written statement was filed by him raising a plea that the suit is barred by law of limitation. In view of the said, the issue is framed as to whether the suit is barred by limitation or not.

3. As of today the plaintiff has not adduced any evidence in

support of their case. At this stage from the observations made in the impugned order it appears that the Notice of Motion No.3511/2015 is taken by the original plaintiff/Respondent that this Court should pass an order asking the defendant as to whether they will be adducing evidence on the point of limitation or not.

4. No doubt, the issue of limitation is a mix question of fact and law. The party may adduce or may not adduce evidence. However the said can be done when the said stage has come. In the present case, the case is not fixed for evidence. Even otherwise in view of the recent ordinance all the issues including issue of limitation will have to be taken simultaneously. In my view impugned order of the Court below directing the defendant No.1 to give in writing whether he is ready to lead evidence or not is clearly unsustainable. Hence, I pass following order:

- i) Appeal is allowed and disposed of;
- ii) The order dated 23/4/2018 passed in Notice of Motion No. 3511/2015 in Suit No.2971/2010 is hereby dismissed. Trial Court is expected to conduct the case in accordance with law.

(V. M. DESHPANDE, J)