

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 13045 OF 2016**

**Smt.Pratibha Prabhakar Kulkarni,
(Since deceased through, Legal heirs &
representatives)**

..... Petitioners

VERSUS

**Dhanraj Sahakari Griha Rachana
Sanstha Maryadit**

..... Respondent

Mr.Y.S.Jahagirdar, Senior Advocate, i/b. Mr.S.S.Kanetkar for the
Petitioners.

Mr.Vishal C.Ghosalkar for the Respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 8th OCTOBER, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 30th March, 2016 passed by the Maharashtra State Co-operative Appellate Court partly allowing the Revision Application No.16 of 2016 filed by the original opponent to the dispute thereby directing the Co-operative Court to consider the application filed by the respondents herein for recast of the issues.

2. It is not in dispute that pursuant to the issues framed by the learned trial judge from time to time, the original disputant has already led oral evidence. Learned counsel appearing for both the parties have pressed in service under Order 14 Rule 5 of the Code of Civil Procedure, 1908 in support of their rival submissions that the court has ample power to amend and/or strike of issues before passing a final

decree.

3. In view of the progress of the suit i.e. recording of evidence pursuant to the issues framed by the learned trial court from time to time, I am not inclined to interfere with the impugned order at this stage.

4. It is made clear that the learned trial judge shall recast the issues if he think necessary before passing final judgment and decree invoking order under Order 14 Rule 5 of the Code of Civil Procedure, 1908. If he proposes to recast the issues, the same shall be done after hearing both the parties.

5. It is made clear that the learned trial judge shall pass such order without being influenced by the order passed by the learned trial judge. The impugned order passed by the Co-operative Appellate Court is substituted by this court.

6. It is made clear that both the parties are permitted to lead evidence on the basis of the issues already framed by the learned trial judge till date.

7. Writ petition is disposed of in the aforesaid terms. No order as to costs.

8. The parties as well as the trial court to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]