

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.20582 OF 2018

Bygging Infrastructure Pvt. Ltd.,
Andheri, Mumbai.

.... Appellant

V/s.

Everest Industries Ltd., Nashik

.... Respondent

Mr. S.L. Shah, I/by M/s. Shah Legal, for the Appellant.

Mr. Naresh Ratnani, I/by M/s. Ashwin Ankhade and Associates, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH SEPTEMBER, 2018.

P.C. :

1. Heard Mr. Shah, learned counsel for the Appellant, and Mr. Ratnani, learned counsel for the Respondent.

2. This Appeal is directed against the order dated 4th June 2018, passed by the City Civil Court, Borivali Division, Dindoshi, Mumbai, on the application below Exhibit-1 in S.C. Suit No.2669 of 2014, whereby the Trial Court has held that the Suit filed by the Respondent is within limitation.

3. The grievance of learned counsel for the Appellant is that, the Trial Court has closed this issue as such and, therefore, if the Appellant is

given liberty to raise this issue at the time of trial, then the Appeal can be disposed off.

4. In my considered opinion, the Trial Court has observed that, this issue of limitation, being a mixed question of facts and law, both the parties may be required to lead evidence. That is the legal position as such and, therefore, it follows that, at the time of trial, the issue of limitation can again be agitated and the Trial Court is required to decide the same.

5. Accordingly, the Appeal is disposed off, keeping the issue of limitation open; to be decided at the time of trial.

[DR. SHALINI PHANSALKAR-JOSHI, J.]