

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

WRIT PETITION NO. 12287 OF 2016

Dr.Jyoti Anant Bobe & Anr.	...	Petitioners
V/s.		
M/s.Maruti Enclave Co-op. Housing Ltd. & Ors.	...	Respondents

- Mr.P.S. Dani, Sr. Advocate i/b. Mr.Nitin S. Dhumal a/w. Mr.Anant Babe for the Petitioners.
- Mr.M.G. Bagkar i/b. Mr.S.V. Marne for Respondent No.3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 19th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Petitioners and Respondent No.3.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 25th August 2016 passed by 13th Joint Civil Judge Senior Division, Thane, below the Application at Exhibit-165 in Regular Civil Suit No.24 of 2003.

3] The said application was filed by the present Petitioner No.1, who is Defendant No.2 before the trial Court, for framing of

'Additional Issues', in view of the specific pleading raised in the written statement. It was submitted that, the contentions relating to: (i) non-joinder of necessary parties; viz.the CIDCO, (ii) whether the suit is barred in view of Section 149 of Maharashtra Regional Town Planning Act, 1966 (for short, "M.R.T.P. Act") (iii) jurisdiction of the Civil Court to entertain the suit in view of the bar created by Section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short, "M.C.S. Act"), were specifically raised; but despite that the trial Court has not framed these issues and while deciding this application itself, trial Court has held that the CIDCO is not necessary party and Section 91 of M.C.S. Act does not apply. The Court has framed only one Additional issue viz. whether the suit is barred for non compliance of Section 149 of the M.R.T.P. Act?

4] In my considered opinion, when the specific contentions were raised in the written statement, relating to non-joinder of necessary party and also bar to the jurisdiction of the Civil Court in view of Section 91 of M.C.S. Act, it was the duty on the part of the trial Court to frame those issues instead of deciding them while deciding the application itself.

5] Hence, the instant Writ Petition is allowed. The impugned order passed by the trial Court is modified directing the trial Court to

frame the two Additional Issues viz. (1) Whether the suit is barred in view of Section 149 of the Maharashtra Regional Town Planning Act, 1966? and (2) Whether the Court has jurisdiction to entertain the suit in view of the bar created under Section 91 of the Maharashtra Co-operative Societies Act, 1960?

6] It is clarified that these two issues are in addition to re-casted issues produced at Exhibit-135A.

[DR.SHALINI PHANSALKAR-JOSHI, J.]