

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11448 OF 2018

Niraj Kumar Dubey and Another ...Petitioners
vs.
Engg. Export Promotion Council ...Respondent

Mr. A.P. Wachasundar, for the Petitioners
Mr. Pradeep Thorat a/w. Mr. M. Siganporia and Mr. Samarth
Chowdhary i/b. M/s. Harian & Co., for the Respondent

CORAM : M. S. SONAK, J.

DATE : NOVEMBER 28, 2018

P.C.:

. Heard Mr. Wachasundar, learned counsel for the
Petitioners and Mr. Thorat, learned counsel for the Respondent,

2. The challenge in this Petition is to the order dated 28th
March, 2018 by which the learned trial Judge has partly allowed
the Petitioners' contention that the suit should be disposed of on
the basis of preliminary issue as to the maintainability of the suit.
Mr. Wachasundar made submissions as if he was arguing the
issue of maintainability of the suit before this Court. In any case,
Mr. Wachasundar submitted that the provision under Section 15(a)
of the Bombay Rents, Hotel and Lodging House Rates Control Act,
1947 stood repealed by the Section 58 of the Maharashtra Rent

Control Act, 1999 on 31st March, 2000 and therefore the suit for enforcement of rights thereunder is not at all maintainable in respect of leave and licence agreement which was made effective from 1st April, 2000. He also contends that since the leave and licence agreement is a written document in terms of Section 12 of the Evidence Act, no amount of oral evidence can be considered in variance with the terms of such leave and licence agreement.

3. He submits that since in the suit only legal issue arises, the trial Court was bound to dispose of this suit only on the basis of legal issue. Mr. Wachasundar also attempted to raise issue of waiver of certain rights by the Respondent who are the Plaintiff in the suit.

4. According to me, the submissions are quite misconceived. In the first place Order 14 Rule 2 requires that the Court has to pronounce the judgment on all issues. No doubt the discretion is vested in the Court where issue of both, law and fact arise from the suit to dispose of the suit on the issue of law only. However, in the facts of the present case, it cannot be said that the learned trial Judge has not exercised the discretion properly or reasonably. Since the issue relating to waiver is raised obviously evidence would be necessary.

5. In any case, the suit relates to the year 2005. The affidavit of evidence in lieu of examination in chief of the Plaintiff's witness is already filed in January, 2016. In these circumstances, learned trial Judge decides to proceed with the main suit and take up all the issues which arises together. There is nothing incorrect in the approach of the learned trial judge.

6. For all the aforesaid reasons, there is no merit in this Petition. Therefore, this Petition is dismissed.

7. Although this Court was inclined to impose cost, considering the fact that the application was made on the basis of legal advise, no cost are imposed.

(M. S. SONAK, J.)