

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application No.120/2018

Kamal Narayan s/o Vithobaji Kore
Vs.

Ld.Civil Judge, Senior Division, through District Court, Gondia and others.

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Shri D.C.R.Mishra, Advocate for applicant.

CORAM : A.S.CHANDURKAR, J.
DATED : 26.09.2018

In this Civil Revision Application, the applicant who is the original plaintiff has challenged the order passed by the trial Court dismissing the suit on the ground that the same was barred by limitation and that the Civil Court had no jurisdiction to entertain the same.

On the question of maintainability of the Civil Revision Application, it is submitted by Shri D.C.R.Mishra, learned counsel for the applicant that as there is no adjudication on merits, the order passed by the trial Court cannot be termed to be a decree. In that regard, learned counsel has referred to the decisions in *Ratansingh Vs. Vijaysingh and others* reported in AIR 2001 SC 279 and *National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara* reported in AIR 2005 SC 242.

The suit in question has been dismissed after answering the preliminary issues. In terms of Section 2(2) of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code", for short), that adjudication has force of a decree. The learned counsel for the applicant sought to derive support from the observations as made in *Ratansingh* (supra) to urge that the impugned adjudication would

not amount to a decree. However, the decision in Ratansingh (supra) has been found not to lay down the correct law by the larger Bench in Shyam Sunder Sarma Vs. Pannalal Jaiswal and others, 2005(1) Mh.L.J. 340. In any event, the suit in question has been decided by framing preliminary issues and thus is a decree within the meaning of Section 2(2) of the Code.

Under Section 115(2) of the Code, this Court has no jurisdiction to vary or reverse a decree or order that is passed by the Civil Court against which an appeal lies. It is found that the remedy of appeal under Section 96 of the Code is available to the applicant.

Hence, on that count it is held that the Civil Revision Application is not maintainable.

The applicant is at liberty to avail the remedy available to him in law. If the applicant invokes the statutory remedy available in law, the time spent by the applicant in this Court in pursuing the civil revision application shall be taken into consideration while deciding the question of limitation.

Civil Revision Application is thus dismissed as not maintainable. The points as raised in the revision application are kept open.

JUDGE