

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

973 CIVIL APPLICATION NO.751 OF 2019
IN
WRIT PETITION NO. 12132 OF 2018

KUMAR NARAYANRAO PRAYAG AND ANOTHER
VERSUS
SHRIDHAR VISHNUDAS JADHAV AND OTHERS

Advocate for Applicants : Mr. V.V. Bhavthankar.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 18.01.2019.

PER COURT :

1. The petitioners are aggrieved by the order passed by this Court (Coram : N.M. Jamadar, J.) dated 19.11.2018, rejecting the Writ Petition No. 12132/2018. The short order passed reads as under :

"1. By this writ petition, the petitioners have challenged order passed by the learned Joint civil Judge (Senior Division), Latur, for framing preliminary issues. Two preliminary issues have been framed as under :

- "1. Whether suit discloses cause of action ?*
- 2. Whether suit is barred by law ?"*

2. Learned Counsel for petitioners submits that in the application only bar of law that has been shown, is of limitation, which is mixed question of law and fact and it should not be tried as a preliminary issue. As regards the second issue is

concerned, it is stated that sufficient cause of action has been stated.

3. The main consideration that has to be kept in mind while exercising power under Article 227 of the Constitution is, whether any failure of justice has occasioned. It is not that for every error this jurisdiction is to be invoked. If the petitioners are right in contending that sufficient cause of action has been disclosed, the issue will be decided in their favour. It is to be noted that the learned Judge has not framed issue of limitation but has only framed the issue, as to whether the suit is barred by law. On this issue, petitioners can advance all their contentions including one advanced before this Court. In view of this position, no interference is warranted in the impugned order. The petition is accordingly rejected."

2. Learned advocate for the petitioners submits that the order at issue suffers an error apparent on the face of the record and is unsustainable in law. Reliance is placed upon the judgment of this Court in the matter of P.R. Sukeshwala and another Vs. Dr. Devadatta V.S. Kerkar and another, [1995 (1) Mh.L.J. 179], to canvass a point that preliminary issue can be framed only on the ground of lack of jurisdiction and due to bar of suit created by law. No preliminary issue can be framed on the ground of non-disclosure of cause of

action in the plaint.

3. I find that the order dated 19.11.2018, is an unambiguous order. It is rightly concluded that every order which may have an error, cannot be branded as being a perverse or erroneous order. What is to be seen is as to whether there is a failure of justice by the passing of an order.

4. In the case of Lily Thomas Vs. Union of India [AIR 2000 SC 1650], it is held that a review application cannot be argued as if a Writ Petition is being reheard.

5. If the petitioners have a good case on the issues framed, they are bound to succeed.

6. Considering the above, I do not find any error apparent on the face of the order, in order to exercise my review jurisdiction. As such, the review petition, is therefore, rejected.

(RAVINDRA V. GHUGE, J.)