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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1663 OF 2019
IN
SUIT NO.1861 OF 2002**

Raishi S. Chheda and ors ... Applicant.
V/s.
Dhirajulal R. Chheda and ors ... Defendants.

Mr. Yahya Ghogari i/by Jatin Shethe, for the plaintiff.
Mr. V. Y. Sanglikar, as/w P. A. Sarwankar, i/by Sarwankar &
Co., for the defendant No.1.

CORAM : N. J. JAMADAR, J.

DATE : 19th November, 2019.

PC. :

1] By this Notice of Motion, defendant No.1 seeks time to file additional evidence on the preliminary issue framed by order dated 30th November, 2010. The following issues were framed:-

- “i] Does defendant No.1 prove that this Court has no jurisdiction to try and entertain this suit?
- ii] Does defendant No.1 prove that the suit is barred by the period of limitation?”

2] The parties have led evidence on the aforesaid issues. Defendant No.1 now seeks leave to lead further evidence in the nature of statements made by plaintiff No.1 in his affidavit in lieu of examination-in-chief in R.A.D. Suit No.261 of 2004, on the file of Court Small Causes at

Mumbai.

3] The learned counsel for the plaintiff, on the other hand, submits that in view of the recent pronouncement of the Supreme Court, in the case of Nusli Neville Wadia vs Ivory Properties and others¹, the issue of limitation cannot be decided as preliminary issue.

4] The question as to whether, in the instant case, the question of issue of limitation can now be determined as preliminary issue in the backdrop of the aforesaid pronouncement, is required to be dealt with. It is pertinent to note that even the issue of jurisdiction has also been directed to be heard as a preliminary issue.

5] In the circumstances, the Notice of Motion can be allowed by permitting defendant No.1 to tender the certified copy of affidavit dated 30th January, 2019, filed by the plaintiff No.1 in R.A.D.No.261 of 2004, pending on the file of Court of Small Causes at Mumbai.

6] The Notice of Motion stands allowed accordingly.

7] The defendant No.1 is permitted to file certified copy of affidavit dated 30th January, 2019 filed by the plaintiff No.1 in R.A.D.Suit No.261 of 2004.

8] Stand over to 10.12.2019.

[N. J. JAMADAR, J.]