

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 WRIT PETITION NO.15047 OF 2019

TULSIDAS RAKHMAJI GAWANDE
VERSUS
BDS MASCHINEN GMBH PRIVATE COMPANY LTD THROUGH
AUTHORIZED OFFICER

.....
Advocate for Petitioner : Mr. Swapnil S. Patil
Advocate for Respondents : Mr. P.K. Lakhotiya h/f Mr. S.S. Panale
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CORAM : V. K. JADHAV, J.
DATED : 15th JANUARY, 2020

PER COURT:-

1. The petitioner-original defendant has filed an application Exh.16 in Special Civil Suit No. 131 of 2017 praying therein that the issue of jurisdiction may kindly be framed as preliminary issue. Obviously, the respondent-plaintiff has strongly resisted the said application by filing say at Exh.18. By impugned order dated 10.4.2019 the 8th Joint Civil Judge, Senior Division, Aurangabad rejected the application Exh.16 with costs of Rs.1,000/- with observations in para 28 that the court is having jurisdiction to try and entertain the suit.

2. Both the learned counsel appearing for the parties have accepted that for deciding the application filed to frame the issue of jurisdiction as preliminary issue, the Court is not supposed to decide the issue of jurisdiction. The trial court may frame the issue of jurisdiction as preliminary issue or may refuse to frame it as

preliminary issue. If the trial court refuses to frame it as preliminary issue, then in terms of the pleadings by the defendant, the said issue is required to be decided by framing the regular issue to that effect at the conclusion of trial. Learned counsel appearing for the respective parties have not disputed this legal position.

3. Learned counsel for the petitioner-original defendant, on instructions, submits that the petitioner is now giving up his claim to frame the issue of jurisdiction as preliminary issue. However, the said issue is required to be framed as regular issue and the same should be decided at the conclusion of the trial. Learned counsel for the respondent-plaintiff is also not disputing that the trial court is required to frame the issue of jurisdiction in terms of the pleadings.

4. In view of above, the impugned order deciding the issue of jurisdiction itself cannot be sustained in the eyes of law and the same is liable to be quashed and set aside. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby allowed.
- II. The impugned order dated 10.4.2019 below Exh.16 in Special Civil Suit No. 131 of 2007 passed by 8th Joint Civil Judge,

Senior Division, Aurangabad is hereby quashed and set aside.

III. The trial court may frame the issue of jurisdiction in terms of pleadings, if any, and decide the same at the conclusion of trial alongwith the other issues.

IV. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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