

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

CIVIL APPLICATION (CAS) NO.152/2019

IN

SECOND APPEAL NO.436 OF 2019

University Engineer (Works Division) Dr. Punjabrao Deshmukh Krishi Vidyapeeth, Akola.

Vs.

Pramod Vasantrao Deshmukh and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. R. Sambre, Advocate for appellant.

Mr. S. J. Kadu, Advocate for respondent nos.1 to 5.

CORAM : AVINASH G. GHAROTE, J.

DATE : FEBRUARY 05, 2020.

Heard Mr. Sambre, learned counsel for the appellant, the respondents who were contracted for construction of godown and residential quarters for lecturers, by the appellant University, filed a suit for recovery of Rs.3,08,917.92, on account of special relief which is claimed to be available to them, on account of increase in the petroleum price. The Trial Court dismissed the suit of the plaintiffs / respondents on the ground of the same being barred by limitation as admittedly, the Government Resolution in this regard was dated 10.01.1992, which was claimed to have been received by the plaintiffs on 31.03.1993 and the suit was filed on 10.06.1996, beyond of a period of three years. The Trial Court further held that the suit was not maintainable in light of the mandate of Section 67 of the Maharashtra Agricultural Universities Act, 1983. The

Appellate Court has reversed the judgment and allowed the appeal. It is an admitted position as reflected from Para 1 of the judgment of the Trial Court that the plaintiffs, had sued as partners of an unregistered firm. The Appellate Court without considering this position, has allowed the appeal. Mr. Sambre, learned counsel has placed reliance upon **Lala Mata Din Vs. A. Narayanan 1969(2) SCC 770**. The following substantial questions of law may arise for consideration.

(1) Whether the judgment of the First Appellate Court is contrary to the mandate of Section 69 of the Partnership Act, which prohibits a suit by unregistered partnership firm ?

(2) What would be the starting point of limitation for calculating the period of limitation for filing a suit for recovery ?

Issue notice to the respondents. At this stage, Mr. S. J. Kadu, learned counsel appears for the respondents and waives notice.

The learned counsel for the parties are agreeable that the matter can be heard finally at the stage of admission. The learned counsel for the appellant is therefore directed to place on record copy of the paper book of the First Appellate Court along with the documents as exhibited before the Trial Court within period of three weeks with advanced copies to

the counsel for respondents.

List the matter for final disposal at the admission stage on 05.03.2020.

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It is stated that pursuant to the judgment and decree as passed by the First Appellate Court execution proceedings have been filed. The execution proceedings shall stand stayed till the decision of this appeal.

Civil Application No.152 of 2019 is disposed of.

JUDGE