

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

Writ Petition No. 4675 of 2021

Shashkiya Rugnalayin Karmachari
Patsanstha Maryadit, Yavatmal,
bearing Registration No. 302,
having its office at Sambhaji Nagar,
Yavatmal, Taluka and
District: Yavatmal through
its President.

..... Petitioner

.....Vs.....

Smt. Kirantai Sanjayrao Deshmukh,
Aged about 56 years,
Occupation : At present Nil,
R/o Shastri Nagar, Yavatmal,
Tq. and District: Yavatmal

..... Respondent

Shri S.K. Tambde, Advocate for the petitioner
Shri Apurv De, Advocate for the respondent

CORAM : AVINASH G. GHAROTE, J.

DATED : 22/12/2021

ORAL JUDGMENT

Heard. **Rule.** Rule made returnable forthwith.

2. Heard finally by consent.

3. The petition challenges the order dated 25.08.2021, by which, the application of the defendant/petitioner for deciding issue no. 7, as a preliminary issue has been rejected.

4. Shri Tambde, learned Counsel for the petitioner, submits that considering the nature of the reliefs sought in the plaint, the suit before the learned trial Court was not maintainable. Section 60 of the MRTU and PULP Act, 1971 has been pressed into service.

5. Shri De, learned Counsel for the respondent, submits that even for deciding issue no. 7, which deals with the jurisdiction of the Civil Court, evidence will have to be recorded, for determining whether the plaintiff/respondent, falls within the definition of employee as defined in Section 3(5) of the MRTU and PULP Act, 1971, and, therefore, the issue of jurisdiction cannot be decided as a preliminary issue.

6. In the suit before the learned trial Court, as many as 8 issues have been framed on 12.07.2019, including issue no. 6 regarding limitation and issue no. 7 regarding jurisdiction of the Civil Court. The issue of jurisdiction, as is sought to be raised, depends upon the analysis of the nature of duties performed by the respondent, which can be only determined on the basis of evidence being recorded. Since all the issues have already been framed, it would be necessary, to record the comprehensive evidence, in stead of piecemeal as all the issues are interconnected, considering which, I do not see any infirmity in the impugned order.

7. Shri Tambade, learned Counsel for the petitioner, relied upon judgment of the Apex Court in **Nusli Neville Wadia Vs. Ivory Properties and ors., AIR 2019 SC 5125**, which held that when facts about issue of limitation are disputed, it cannot be decided as preliminary issue, which proposition would equally apply to the question of jurisdiction as it is based upon the facts to be brought on record by way of evidence.

8. In view of the above, I do not see any merit in the petition. Accordingly, the writ petition is dismissed. No costs.

JUDGE

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