

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

941 WRIT PETITION NO.6377 OF 2022

**TRIMBAK SHANKARRAO TEKALE PATIL DIED THROUGH LRS
ADNYANBAI TRIMBAK TEKALE PATIL
VERSUS
SHESHERAO YASHVANTRAO JADHAVAR**

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Advocate for Petitioner : Mr. Sujit A. Patil h/f Mr. Salunke V. D.

**CORAM : MANGESH S. PATIL, J.
DATE : 24.06.2022.**

PER COURT :

Heard learned advocate for the petitioner.

2. The petitioner is the original plaintiff aggrieved by the order passed by the trial court allowing the application (Exh. 38) of respondent/ defendant whereby issue regarding limitation has been framed as well as aggrieved by rejection of his application (Exh. 42) refusing to consider his request for recasting the issue to the effect as to if the defendant proved that the suit was barred by limitation.

3. In view of Section 3 of the Limitation Act it is imperative for a court to consider the issue of limitation even if that has not been raised in defence. The order under challenge merely intends to implement that provision by directing the issue regarding limitation to be framed. There is no perversity or illegality.

4. The request of the petitioner to recast the issue regarding limitation so as to indicate the burden on the respondent/defendant has also been rightly turned down. The issue is as to whether the suit is within limitation. It need not further indicate as to on whom the burden would lie. The parties are merely put to notice by framing the issue as to

what kind of evidence they are expected to lead so that the the answer to the issue will be in their favour.

5. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)

mkd/-