

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

WRIT PETITION NO. 1646 OF 2022

Arun Bhaiyyaji Nimbalkar Vs. The Corporation of the City of Nagpur

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

Court's or Judge's orders

Mr. V.S.Bapat, Advocate for petitioner
Mr. A.M.Quazi, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 19/08/2022

1] Heard Mr. Bapat, learned counsel for the petitioner and Mr. Quazi, learned counsel for the respondent.

2] The petition questions the order dated 22.11.2021 whereby the application filed by the plaintiff/petitioner under Order 47 Rule 1 of CPC for review of the order dated 4.2.2017 below Exh. 29 has been rejected on the ground that since a preliminary issue of limitation has been framed, and the parties are directed to adduce the evidence thereupon, there is no error apparent on the face of record.

3] Mr. Bapat, learned counsel for the petitioner submits that since evidence is required to be laid on the issue of limitation, it cannot be tried as a preliminary issue in light of the language of Order 14 Rule 2(2) of

the CPC. Reliance is placed upon **National Aluminium Co. Ltd. Vrs. G.C.Kanungo, 2009 AIR SCW 4672.**

4] Mr. Quazi, learned counsel for the respondent vehemently opposes the petition and submits that though evidence is required to be led upon the issue of limitation, the same can be treated as a preliminary issue and is not required to be decided with other issues which may be framed, for which reliance is placed upon **M/s Mongia Reality and Buildwell Private Limited vrs. Manik Sethi, 2022 Live Law (SC) 148.**

5] The provisions of Order 14 Rule 2(2) of CPC read as under:

“O.14 R2(2) – Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to –

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

A perusal of sub-rule 2 of Order 14, Rule 2 of CPC would indicate that a preliminary issue can be framed in respect of the jurisdiction of the Court or bar to the suit created by any law for the time being in force.

6] No doubt, that the limitation Act creates a bar as contemplated by Order 14 Rule 2(2)(b) of the CPC. However, it would be material to note that the deciding of this issue in cases where there is admitted position regarding the averments in the plaint, would not require evidence to be led. Since it is not disputed by Mr. Quazi, learned counsel for the respondent that the issue of limitation as framed on 4.2.2017 would require evidence to be laid, which was also the opinion of the Court as is reflected from the order dated 4.2.2017 (pg.35), the same, in my considered opinion, cannot be decided as a preliminary issue.

7] In **Mongia Reality and Buildwell Private Limited** relied upon by Mr. Quazi, learned counsel for the respondent, **Nusli Neville Wadia vrs. Ivory Properties, 2020 (6) SCC 557** has been considered. In para 52 of **Nusli Wadia** (supra) thereof, the Hon Apex Court has categorically held that in a case question of limitation can be decided based on admitted facts, then it can be decided as a preliminary issue under Order 14 Rule 2(2) (b) of the CPC. Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue. The same has been reiterated in **Mongia Reality and Buildwell Private Limited** (supra) in Para 15 by holding that since the determination of the issue of limitation is not a pure question of law, it cannot

be decided as a preliminary issue under Order XIV 14 Rule 2 of the CPC. That being the position, and since in the instant case, there is a dispute regarding arising of the cause of action, as claimed in para 13 of the plaint (pg. 24) and since there is no dispute also that evidence is required to be led on the issue of limitation, the issue of limitation cannot be decided as a preliminary issue, resultant the impugned order dated 22.11.21 passed below Exh.49 in SCS No. 527/2009 is hereby quashed and set aside and the application under Order 47 Rule 1 of CPC is hereby allowed, as there is clearly an error apparent on the face of record as contemplated by Order 47 Rule 1 of CPC. It is therefore directed that the issue of limitation as framed under the Order dated 4.2.2017 cannot be decided as a preliminary issue and shall have to be decided with the other issues as and when they are framed.

8] The petition is allowed in above terms. No costs.

JUDGE

Rvjalit