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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.258 OF 2023
WITH
INTERIM APPLICATION NO.17615 OF 2023
AND
INTERIM APPLICATION NO.13565 OF 2023**

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Mehjabeen Aslam Ahmed

... Applicant

V/s.

Vimlesh Kumar Singh & Ors.

... Respondents

Mr. Mehjabeen Ahmed, applicant in-person

Mr. Brian A. D'Lima for respondent/Dr.Aarti A.
Benegal.

Mr. Nishant Tripathi and Mr. Pranav Vaidya i/by M.
Tripathi & Co. for respondent No.1.

Mr. Suresh Sabrad i/by Mr. Pratik Sabrad for
respondent Nos.4-I to 4-V, 5, 6, 8 & 9.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 5, 2023

RC.:

1. The order impugned rejects an application filed by the applicant below Exhibit-163 for framing preliminary issue as regards jurisdiction and limitation.

2. Considering the nature of order passed, proviso to Section 115 of the Code of Civil Procedure, 1908 bars filing of civil revision application. However, the civil revision application needs to be decided on merits considering the fact that the applicant has filed it as party in-person.

3. On perusal of the order, it appears that the Trial court refused to frame preliminary issue on the ground that written statement filed by the applicant is not yet taken on record. According to the applicant, application to place written statement on record is pending. Unless the permission to file written statement is granted as it is filed after 90 days' of service of summons, it cannot be construed that the written statement is on record of the Trial Court. In absence of the written statement being filed by the applicant, the Trial Court was justified in refusing to frame preliminary issue under Order 14 Rule 2 of the Code of Civil Procedure, 1908.

4. It is well settled that issues under Order 14 can be framed provided the defendant files written statement or an issue of pure question of law arises.

5. The Apex Court in **Ramesh Chandra Sankla v. Vikram Cement** reported in (2008) 14 SCC 58 has held that in relation to preliminary issue, in view of mandate of Order 20 Rule 5 the Trial Court shall endeavor to decide all issues simultaneously, so that the possibility of remand is avoided. Therefore, in my opinion, no case for interference in the impugned order is made out.

6. The civil revision application is rejected. No costs.

7. In view of rejection of the civil revision application, all pending interim applications stand disposed of as infructuous.

8. The notice issued to the added respondent is discharged.

(AMIT BORKAR, J.)