

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

WRIT PETITION NO.3993 OF 2022

Vasant Jairam Badodekar .Vs. Mohd. Taher Abdul Rashid

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V. Sohoni, Advocate for the petitioner.

Shri V.G. Lohiya, A.G.P. for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 27/04/2023

1. Heard.
2. The order dated 19.09.2021 passed below Exh. 217 by the 5th Jt. Civil Judge, Jr. Dn. Khamgaon in R.C.S. No.05 of 2000, is under challenge to the extent of observations made in paragraph 9, which reads thus:

“9. As far as earlier evidence and earlier findings on issue of limitation is concerned, as per the order passed by Hon’ble Apex Court the whole case is to be tried de novo which means now again fresh trial is to be commenced. Hence, again issue of limitation and other issues by taking into consideration the respective pleadings of the both the sides are to be framed. Hence, after framing of issues, the matter will be fixed for evidence. Hence, this application deserves to be partly allowed as instead of framing additional issues fresh issue will be framed”.

3. It is the case of the petitioner that after *ex parte* decree was passed in favour of the plaintiff, for specific performance, an appeal, was filed and the same came to be allowed and the matter was remanded back to the trial Court for *de novo* trial.

4. It is pointed out that thereafter, the appeal against order was filed in this Court which came to be dismissed vide judgment dated 12.10.2015 and against which SLP was filed.

5. In the said SLP, on 28.01.2016 while issuing notices, the Hon'ble Supreme Court of India permitted the trial Court to proceed with the trial on the point of limitation and subsequent to that, the issue of limitation was decided in affirmative holding that the suit is within limitation.

6. Thereafter, the SLP was disposed of by keeping all the points open including limitation.

7. Since, the point of limitation was already decided as per the directions of the Hon'ble Supreme Court of India vide order dated 28.01.2016, a review petition was filed before the Hon'ble Apex Court, pointing out that, as the point of limitation is decided vide order dated 22.12.2017, the remand should be for *de novo* trial without decision on the issue of limitation.

8. The said review application was rejected by the Hon'ble Supreme Court of India vide order dated 09.04.2019, which reads thus:

“Having carefully gone through the Review Petition, the order under challenge and the papers annexed therewith, we are satisfied that there is no error apparent on the face of the record, warranting reconsideration of the order impugned.

The Review Petition is, accordingly, dismissed.”

9. Thus, it appears that having carefully gone through the review petition and also considering the point raised as regards limitation, the review application was rejected.

10. Thus, in light of the fact that the review application was moved on the same ground as the present petitioner and since it was rejected vide order dated 09.04.2019 by the Hon’ble Supreme Court of India, it cannot be said that the observations made in paragraph 9 are contrary to the directions of the Hon’ble Supreme Court of India.

11. Accordingly, I do not find any merit in the present writ petition. The writ petition is **dismissed**.

12. However, considering the age of the defendant and the suit is pending since 2000, the trial Court is directed to expedite the suit and decide the same, in any case, on or before **31.10.2023**.

JUDGE