



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12121 OF 2024

Vijaysingh Narayansingh Chandel
VERSUS
Balaji Naganthrao Dahale And Another

Mr. M. P. Kale, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 12th NOVEMBER, 2024

PER COURT :-

1. Heard.
2. Learned counsel for the petitioner submits that the petitioner has taken specific defence in the written statement that the plaintiff did not have capacity to pay consideration. It is his submission that when such specific plea is raised, it was necessary for the Trial Court to frame specific issue to that effect.
3. Perusal of the impugned order indicates that the learned Trial Court has held that the issues framed are inclusive of the proposed issues. Perusal of the issues framed vide Exhibit 14 indicates that issue no. 7 speaks about as to whether the defendant proved that the plaintiffs are not ready and willing to perform their part of the contract. The said issue framed by the Trial Court is wide enough to cover the defence

taken by the defendant in his written statement that the plaintiffs had no capacity to pay amount of consideration. In view of the impugned order, it is obligatory on the part of the learned Trial Court to consider the said contention of the petitioner at the time of decision of the case. This Court is informed that the evidence in the case is over and matter is posted for arguments.

4. Having regard to these facts and the above observations, petition is disposed off.

(R. M. JOSHI, J.)

ssp