



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

**910 APEAL FROM ORDER NO. 10 OF 2025
WITH
CIVIL APPLICATION NO. 12772 OF 2024
IN AO/10/2025**

**RAVINDRA BANSILAL SANCHETI
VERSUS
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
AND ANOTHER**

...
Advocate for the Appellant : Mr. Ajeet D. Kasliwal
Advocate for Respondent Nos. 1 & 2 : Mr. S.A. Bajaj
...

**CORAM : S. G. CHAPALGAONKAR, J.
Dated : 12.03.2025**

PER COURT :-

1. Appellant (Original Plaintiff) impugns order dated 06.07.2024 passed by District Judge, Vijapur in Regular Civil Appeal No. 28 of 2022.
2. Appellant/Original Plaintiff instituted Special Civil Suit No. 31 of 2019 for declaration and recovery of amount. Trial Court framed issues based on pleadings of parties, recorded evidence and finally dismissed suit vide judgment and decree dated 06.09.2022.
3. Aggrieved plaintiff filed Regular Civil Appeal No. 28 of 2022 before District Judge, Vijapur assailing decree of trial Court. Learned District Judge partly allowed appeal thereby setting aside decree of trial Court and remanded matter for decision of suit afresh by framing preliminary issue on point of jurisdiction by giving opportunity to both parties to lead evidence and file documents.
4. Mr. Kasliwal, learned Advocate appearing for appellant submits that issue as to jurisdiction of Civil Court was raised by

defendants vide application Exh. 48 by invoking provision under Order VII Rule 11 of CPC. Trial Court was pleased to reject said application observing that it has jurisdiction. Said order was assailed before this Court and attained finality. Therefore, there was no necessity for framing of such issue and remand matter to trial Court for framing such issue and render finding thereon.

5. Per Contra, Mr. Bajaj learned Advocate for respondent submits that issue of jurisdiction goes to root of matter. Therefore, clear finding is necessary on such issue and remand of matter was essential for same purpose.

6. Having considered submissions advanced, it can be observed that appellate Court remanded matter to Trial Court for giving reason that Trial Court omitted to record appropriate finding on issue of jurisdiction which was obligation in view of specific objection raised by defendant.

7. Order 41 Rules 23 to 26 deals with powers of appellate Court to remand matter to Court from whose decree, appeal is preferred.

8. Rule **24 and 25** reads thus :

“24. Where evidence upon record is sufficient to enable the Appellate Court may determine case finally. — Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.—Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to

determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor 1 [within such time as may be fixed by the Appellate Court or extended by it from time to time].”

9. Rule 25 specifically states that where Court from whose decree appeal is preferred has omitted to frame or try issue and render finding thereon, appellate Court may frame necessary issue and refer same to trial Court so also direct such Court to take evidence required.

10. Aforesaid procedure is contemplated where additional issue is framed which requires recording of evidence or where evidence on record is not sufficient to enable Court to render decision on additional issue.

11. In present case, if appellate Court was of view that issue of jurisdiction was necessary and trial Court has omitted to frame the same, it was within jurisdiction of appellate Court to frame the same and render finding. However, when issue does not require trial and same can be decided based on evidence already recorded, appellate Court itself can render finding on additional issue so framed. In such case remand is not necessary.

12. An unwarranted remand of matter unnecessarily consumes time of Court and also causes inconvenience to parties. In present case from reasons as adopted by appellate Court, it is not discernible that trial on issue of jurisdiction was necessary or parties were required to lead additional evidence on such issue, therefore, remand of matter was

absolutely uncalled for. If appellate Court considers an issue essential for just decision of matter, appellate Court may render finding on basis of material available on record.

13. In result, order impugns cannot be sustained. In result, following order :

ORDER

- (i) Appeal from Order is partly allowed.
- (ii) Impugned judgment and decree passed by appellate Court in RCA No. 28 of 2022 is hereby quashed and set aside.
- (iii) RCA No. 28 of 2022 be re-admitted to its original position.
- (iv) Parties are at liberty to advance submissions on all points including necessity to frame issue of jurisdiction or bar of res-judicata within the proceeding.
- (v) Appellate Court may if so required, frame an issue as to jurisdiction, and decide the same along with other issues at appellate stage only.
- (vi) Hearing of appeal be expedited.
- (vii) Parties to appear before first Appellate Court on 05.04.2025.

**(S. G. CHAPALGAONKAR)
JUDGE**

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