

operative Societies Act, 1960 ("MCS Act"). Accordingly a preliminary issue was framed and was even decided by holding that the proceedings were tenable without pre-notice under Section 164 of the MCS Act. Being aggrieved by these findings deciding the preliminary issue, this Civil Revision Application is filed.

2. Learned counsel for the applicant submits that the application that was filed at Exhibit 23 was only for framing of an issue as to whether the application would be barred for non-issue of notice under Section 164 of the MCS Act. Learned counsel for the applicant submits that the issues were framed on 2nd July 2014. However, the issue regarding tenability of the application for want of notice under Section 164 of the MCS Act was not framed; hence, the prayer was made only for framing additional issue. He therefore submits that there was no reason for the trial court to decide the issue independently as a preliminary issue. He therefore submits that the issue as requested by application at Exhibit 23 should have been framed to be decided along with other issues framed on 2nd July 2014.

3. Learned counsel for the respondents submits that the

miscellaneous application for mesne profits is filed pursuant to the liberty granted by the division bench of this court in Writ Petition No. 4782 of 1995. She has tendered copy of the judgment dated 11th July 2006 in Writ Petition No. 4782 of 1995. She relies upon the liberty as recorded in paragraph 12 of the judgment. She submits that pursuant to the liberty granted the application for mesne profits is filed by the respondents. She therefore submits that the findings recorded in the impugned order would not require any consideration.

4. Learned counsel for the respondents submits that the possession of the respondents land was taken over on 29th January 1986 pursuant to the order passed under the Urban Land (Ceiling and Regulation) Act, 1976 ("ULC Act"). She submits that it was the respondents' contention that since the land owned by them was an agricultural land, it could not have been declared surplus under the ULC Act. She therefore points out that by order dated 21st October 1994 the order was passed by the competent appellate authority under the ULC Act setting aside the earlier order and directing restoration of possession. Accordingly the

possession was restored to the respondents on 18th December 2006. She points out that order of restoration of possession passed under the ULC Act was challenged by the present applicant by filing Writ Petition No. 4782 of 1995. She submits that the said order of restoration of possession was confirmed by the division bench of this court by dismissing the petition. She points out that at the time of dismissing the petition, this court granted liberty to the respondents to claim mesne profits by taking appropriate steps. She therefore submits that the findings recorded in the impugned order are correct. There was no necessity for issuing notice under Section 164 of the MCS Act.

5. I have perused the papers of the application. The respondents' application is for grant of mesne profits for the period when the possession was taken over on 29th January 1986 till restoration of possession on 18th December 2006. Learned counsel for the respondents is right in submitting that the application for mesne profit is filed pursuant to the liberty granted by division bench of this court vide judgment and order dated 11th July 2006.

6. The application at Exhibit-29 filed by the present

applicant is for framing additional issue regarding maintainability of the application for mesne profits for want of notice under Section 164 of the MCS Act. The issues were already framed on 2nd July 2014 below Exhibit-31. Since the issue of maintainability of the application was not framed, the present applicant filed an application at Exhibit-23. It was nobody's prayer for deciding the additional issue as a preliminary issue. Hence, I do not see any reason to decide the additional issue as a preliminary issue. The trial court without recording any reasons to decide the additional issue as a preliminary issue, has proceeded to record findings only on the additional issue as framed in paragraph 3 of the impugned order. The regular issues as contemplated under Order XIV Rule1 of the Code of Civil Procedure,1908 were settled considering the rival pleadings of the parties.

7. Thus, the application at Exhibit-23 filed by the present applicant ought to have been decided only for the purpose of framing additional issue and the court could have decided the issue alongwith other issues framed at Exhibit-31. Considering the rival pleadings of the parties and the application at Exhibit-23 there is no valid reason recorded for

deciding the additional issue as a preliminary issue.

8. The Civil Revision Application is therefore partly allowed by passing the following order:

(i) The impugned order dated 20th June 2015 passed by the CJSD, Sangli below Exhibit 23 is quashed and set aside to the extent of findings recorded on the additional issue framed in paragraph 3 of the impugned order.

(ii) Issue framed in paragraph 3 of the impugned order shall be treated as an additional issue and shall be tried along with other issues framed at Exhibit 31.

(iii) The rival contentions of the parties on merits of the application for mesne profits and the issues that are framed are kept open.

(iv) Since the respondents' application has remained pending since 2009, the trial court shall endeavour to decide the application as expeditiously as possible.

(v) The parties shall co-operate for early disposal of the application and unnecessary adjournment shall not be granted.

(vi) Civil Revision Application is partly allowed in the aforesaid terms.

[GAURI GODSE, J.]