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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2402 OF 2025**

Ashok Damodar Hole and Ors ... Petitioners

VS.

Shubhangi Suresh Hole and Ors ... Respondents

Mr. Aniket Nangare i/b. Mr. R.S. Gangawane for Petitioners.

Mr. Sarthak S. Diwan for Respondent.

CORAM : GAURI GODSE, J.

DATED : 9th JULY 2025

ORDER:

1. Heard learned counsels for the parties. The petition is taken up for final disposal. This petition is filed by the defendants to challenge the order rejecting their application for framing additional issues. The petitioners prayed for framing issue regarding, whether the suit is barred by limitation.

2. Learned counsel for the petitioners submits that the earlier application filed for framing additional issues was rejected which was challenged in Writ Petition No. 16976 of 2024. He submits that this court vide order dated 11th December 2024, disposed of the writ petition with the observations that the learned trial judge can take a relook on the application for framing additional issues.

In spite of observations of this court additional issues was not framed. Hence, petitioners filed application at Exhibit-42 for framing additional issue of limitation. He submits that the application was erroneously rejected on the ground that the suit is kept for cross-examination and only to avoid the cross-examination, such application is filed. Learned counsel for the petitioners submits that the issue of limitation is a mixed question of law and fact, which can be framed at any stage. He therefore submits that though the trial has commenced; only affidavit of examination-in-chief of the plaintiff is filed and the trial has not proceeded. He thus, submits that there is no valid ground to refuse to frame issue of limitation.

3. Learned counsel for the respondents-plaintiffs opposes the petition on the ground that the trial is unnecessarily delayed in view of the applications filed by the petitioners. He submits that since, the trial has commenced there is no reason to frame additional issues.

4. I have perused the papers of the petition. The suit is filed for specific performance. The defendants have raised a ground that the suit would be barred by limitation. Considering the rival pleadings, the issue of limitation does arise in the suit. It is well settled legal principle, that the issue of limitation is a question of law that can be considered at any stage. In view of Section 3 of

Limitation Act, 1963, the duty is cast upon the court to examine whether the suit would be within limitation. In view of the provision of Section 3 of the Limitation Act, a suit cannot be entertained if it is found barred by limitation. Hence, I do not see any reason for not framing issue of limitation.

5. Considering that the trial has not commenced further, except for filing affidavit of examination-in-chief of the plaintiff, no prejudice would be caused to either of the parties if the additional issue of limitation is framed. The plaintiff would always be entitled to make application to recall the witness and lead further evidence. Hence, this is a fit case to exercise discretionary jurisdiction under Article 227 of the Constitution of India.

6. The Writ Petition is therefore allowed by passing the following order:

I) The order dated 5th February 2025, passed by the Civil Judge Senior Division, Pune below Exhibit-42 in Special Civil Suit No. 1878 of 2019, is quashed and set aside.

II) The application below Exhibit-42 is allowed and following additional issue is framed:

“Whether the suit is barred by the law of limitation”.

III) The plaintiffs are at liberty to file an appropriate

application for recalling witness and permission to lead further evidence. If such an application is filed, the trial court shall permit the plaintiff to recall the witness and lead further evidence.

7. Writ Petition is allowed in the aforesaid terms.
8. All rival contentions of the parties on merits of the suit are kept open.

(GAURI GODSE, J.)