

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8735 OF 2025

Varia Parambil Kuttan
Age 78 years, Occ: Retired
Flat No. D13, 4th Floor,
Golden and Silver Park
Co Society Housing Ltd,
Shivaji Nagar, Wagale Industrial
Estate, Thane – 400 604.

Also At V. P. Kuttan
Valiyaparambil House,
Via Cherpulassery,
Dist: Palakkad
State: Kerala – 679 503.

...Petitioner

Versus

M/s Engineer Components
And Equipment
Plot No. 29, Road No. 10,
Wagale Estate, Thane – 400 604.

...Respondent

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2026.01.13
20:07:21 +0530

Mr. C.S. Joshi, with Abhay Joshi, for the Petitioner.
Dr. D. S. Hatle, with Deepak Jamsandekar, Nirmiti Lawane and
Umesh Chavan, for the Respondent.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 5th JANUARY 2026
PRONOUNCED ON : 13th JANUARY 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioner-Defendant assails the legality, propriety and correctness of an order dated 15th February 2025 passed by the learned Civil Judge, Senior Division, Thane, whereby the Applications (Exhibits 45 and 47) in SCS No. 484 of 2017, preferred by the Petitioner, for framing additional issues came to be rejected

3. Shorn of superfluities, the background facts can be stated as under:

3.1 The Respondent-Plaintiff is a partnership firm. The Plaintiff is engaged in the business of fabrication. The Defendant was employed with the Plaintiff as a “Foreman”. The Plaintiff claimed to have provided to the Defendant a furnished accommodation, being Flat No. D-13, 3rd Floor, Golden and Silver Part Cooperative Housing Society Ltd, Thane (“the suit flat”) as a service tenant. The Defendant was to use and occupy the suit flat till he was in the employment of the Plaintiff.

3.2 The Plaintiff asserts the Defendant resigned from the Plaintiff’s firm with effect from 31st December 2007. Thereupon, the Plaintiff called upon the Defendant to vacate the suit flat vide letter dated 24th August 2009. As the Defendant did not vacate the suit flat, a legal notice was addressed to the Defendant on 6th August 2010. In reply, the

Defendant contended that the suit flat was given to him by way of gift on account of outstanding services rendered by the Defendant to then partners of the Plaintiff. As the Defendant did not vacate the suit flat despite repeated requisitions and the legal notice dated 15th May 2017, a Suit came to be instituted for the eviction of the Defendant under Section 16(1)(f) of the Maharashtra Rent Control Act, 1999 (“the Rent Act, 1999”).

3.3 The Defendant appeared and contested the suit by filing Written Statement. On the basis of the pleadings and material on record, the trial Court settled issues on 22nd August 2024, *inter alia*, whether the suit flat was let to the Defendant for use as the Defendant was in the service of the Plaintiff, and whether the Defendant, in turn, proved that the Plaintiff had allotted the suit flat to him on ownership basis.

3.4 The Defendant filed an Application (Exhibit 45) for framing addition issues on the aspects of *locus standi* of the Plaintiff to institute the Suit, existence of a cause of action, bar of limitation and proper valuation of the suit claim and payment of proper Court fees thereon. By way of another Application (Exhibit 47) the Defendant sought framing of another additional issue; whether the title suit was maintainable in the present form?

3.5 The Applications were resisted by the Plaintiff.

3.6 By the impugned order, the learned Civil Judge was persuaded to reject the Applications opining that the issues framed by order dated 22nd August 2024 were correctly settled to encapsulate the controversy and adjudicate all the disputes between the parties, and the additional issues proposed by the Defendant were not required to be framed as the contentions in the Written Statement on those points were vague in as much as one line objections were raised by the Defendant without material particulars.

3.7 Being aggrieved the Defendant has invoked the writ jurisdiction.

4. I have heard Mr. C.S. Joshi, the learned Counsel for the Petitioner, and Dr. D. S. Hatle, the learned Counsel for the Respondent at some length. The learned Counsel took the Court through the pleadings and the material on record.

5. Mr. Joshi, the learned Counsel for the Petitioner, would urge that the learned Civil Judge has decided the Applications for framing additional issues in a causal and perfunctory manner. The Defendant had raised specific grounds questioning the maintainability of the suit, the bar of limitation and improper valuation of the suit claim. The learned Civil Judge was, therefore, not at all justified in rejecting the Applications by observing that the Defendant had raised one line objections.

6. Amplifying the submission, Mr. Joshi would urge that as there was no material to indicate that, on the date of the institution of the suit, the Plaintiff was a registered Partnership Firm and the person suing had been shown as partner in the firm, the suit was clearly barred by the provisions contained in Section 69(2) of the Indian Partnership Act, 1932 (“the Act, 1932”). Secondly the Defendant had raised specific ground of bar of limitation. In the reply to the legal notice, dated 6th August 2010, the Defendant had categorically denied the case of the Plaintiff that the Defendant was a service tenant and, thus, institution of the suit on 9th August 2017 was clearly barred by law of limitation.

7. In opposition to this, Dr. Hatle, the learned Counsel for the Respondent, would urge that, the Defendant had resorted to dilatory tactics by filing one application after another so as to squat on the suit flat despite the relationship of employer and employee having come to an end in the year 2007. The instant Applications were part of the said strategy. Dr. Hatle would submit that, the contentions in the Written Statement regarding the maintainability of the suit, bar of limitation and Court fees etc were bald and vague. The learned Civil Judge was, therefore, fully justified in declining to frame additional issues on the basis of such vague pleadings.

8. I have given careful consideration to the aforesaid rival submissions canvassed across the bar.

9. The imperativeness of framing correct issues in a civil trial can hardly be over-emphasized. Framing of correct issues is of critical salience for a correct decision of the lis. The object of framing an issue is to encapsulate the real dispute between the parties, narrow down the area of controversy and tie down the evidence to be adduced in support or rebuttal.

10. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of **Makhan Lal Bangal Vs Manas Bhunia and Ors**¹

“19. An election petition is like a civil trial. The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues the disputes on which the two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of Order XIV of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of a distinct issue. An obligation is cast on

1 (2001) 2 SCC 652.

the court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the court may at once pronounce the judgment. If the parties are at issue on some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies, not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.

11. Under the scheme of Order XIV of the Code of Civil Procedure, 1908 (“the Code”), an issue arises when a material proposition of law or

fact is affirmed by one party and denied by the other. There ought to be clear and categorical pleadings to necessitate framing of an issue. Bald and vague contentions in the pleadings do not sustain an issue.

12. In the case of **Bhagat Singh and Ors Vs Jaswant Singh**,² the Supreme Court underscored the necessity of adequate pleading. It was enunciated that a vague contention in the pleading would not cloth such contention with the definiteness of the requisite pleading and will not make it incumbent on the parties to lead evidence for or against the existence of a certain custom and the Plaintiff's case not coming within it. The mere fact the Defendants contended in the Written Statement that the Plaintiff could not be adopted according to the custom does not tantamount to making the requisite pleas and, therefore, the view taken by both the Courts below cannot be said to be wrong. In fact, this view was in accordance with the provisions of Rule 1 of Order XIV of the Code.

13. In the case of **T. H. Musthaffa Vs M.P. Varghese & Ors**,³ the Supreme Court reiterated that if the pleadings did not contain the necessary foundation for raising an appropriate issue, the same cannot go to trial. Any amount of evidence in that regard, however excellent the same may be, will be futile.

² AIR 1966 SC 1861.

³ (1999) 8 SCC 692.

14. In **Pandu Dhondi Yerudkar & Anr Vs Ananda Krishna Patil**,⁴ the learned Chief Justice, in the context of framing an issue regarding the tenancy, sounded a note of caution by observing that, a little caution is required to be exercised before the Court actually frames such an issue. Under Order XIV of the Code an issue can only arise when a material proposition of fact or law is affirmed by one party and denied by the other. When a vague plea is made by the Defendant contending that he is tenant of the land, the Court should hesitate to frame such an issue on such a vague plea, unless the Defendant is able to give particulars showing the time when the tenancy was created, the person by whom it was created, and the terms on which it was created. Normally the rules of pleadings require that these particulars are the minimum particulars which a man must furnish before he can request the Court to frame an issue as regards the claim made for tenancy.

15. The aforesaid being the position in law as regards the framing of issues, reverting to the facts of the case, a bare perusal of the contention in the Written Statement, especially in paragraph 15 under the caption “preliminary objection” there are indeed bald and vague allegations. It reads as under:

“15) Preliminary objections:

i) This suit is not maintainable in Law.

⁴ AIR 1975 Bom 52.

- ii) Not supported with bear documents. It is for the authorized signatory to prove his nexus with partnership firm and his locus-standi in the matter.
- iii) Act of Shri C. Ranganathan and Shri M Damodaran, partners of the company, in the year 1990 allotted the flat free of cost to this Defendant can well be construed act on behalf of partnership firm.
- iv) Authorized partner's right to sue to this Defendant third party is yet to be decided.
- v) If affairs of the company completely wound up impliedly binding on agent the liability.
- vi) Suit is lacking necessary party in the suit. Society is not cited as a party.
- vii) Limitation — there is no any letter to this Defendant at the time of allotment of this flat in June 1990 about terms and conditions. From the entry itself it is evident that this flat is given free of cost to this Defendant which is confirmed from subsequent conduct of partners also. No flat rent, maintenance is deducted from his salary at any point of time. From which it is crystal clear that suit is barred by Limitation. This Defendant made it clear on 16.8.2010 his stand and suit filed in 9.8.2017 by way of issuing various notices again and again is not tenable and suit is barred by Limitation.

viii) Court Fee — Suit flat value in the year 1990 was Rs.01,44,000.00 enhanced to Rs.02,50,000/- and present market value from ready-reckoner is Rs.50 to 60 Lakh (Fifty to Sixty Lakh). No Court fee is affixed when possession is claimed on the pretext of service quarter when this Defendant's entry as an owner.

ix) No cause of action — Cause of action mentioned in suit is imaginary. On this count also suit is not maintainable.”

16. In the wake of the aforesaid nature of the contentions in the Written Statement, which lack material particulars to substantiate the purported preliminary objection, the learned Civil Judge cannot be said to have committed any error in observing that the Defendant had raised vague and one line objections which do not warrant framing of the additional issues.

17. Mr. Joshi, the learned Counsel for the Petitioner, urged two grounds, principally. First, the bar of limitation. Second, the bar under Section 69(2) of the Act, 1932. According to Mr. Joshi, the trial Court ought to have framed the issues on these two points which go to the root of the matter.

18. On the first count, the thrust of the submission of Mr. Joshi, was that since the reply to the first legal notice was given on 16th August 2010, wherein the Defendant had made known his stand in clear and

categorical words, institution of the suit on 9th August 2007 was clearly barred by law of limitation. This submission is required to be appreciated in the light of the nature of the suit. As noted above, the suit has been instituted for eviction on the statutory ground provided under Section 16(1)(f) of the Rent Act, 1999.

19. The submission premised on the suit being one for reliefs sans a declaration of title is wholly inapposite. For a suit for recovery of possession under the provisions of the rent control legislation, the period of limitation is 12 years, and not 3 years as was sought to be canvassed by Mr. Joshi.

20. The aforesaid position was clarified by the Supreme Court in the case of **Shakuntala S Tiwari Vs Hem Chand M Singhania**,⁵ wherein, after an analysis of the provisions contained in the Limitation Act and co-relating those provisions with the provisions of Section 12 and 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (“the Rent Act, 1947”), the Supreme Court emphasized that either Articles 66 or 67 of the Limitation Act would be applicable to a suit for eviction of a tenant under the Rent Act, 1947, and, there is no scope of the Application of Article 113 of the Limitation Act, in any view of the matter.

5 AIR 1987 SC 1823.

21. In case of **Ganpat Ram Sharma and Ors Vs Gayatridevi**,⁶ the Supreme court further clarified that Article 66 would govern a case for recovery of possession of the premises under Section 14 of the Delhi Rent Control Act, 1958 because determination of tenancy by notice under Section 106 of the Transfer of Property Act, 1882 was no longer necessary. The observations of the Supreme Court in paragraph 22 are material hence extracted below.

“22. The next aspect of the matter is which article of the Limitation Act would be applicable. Reference was made to Article 66 and Article 67 of the Limitation Act, 1963 (hereinafter called the Limitation Act) which stipulates that for possession of immovable property the cause of action arises or accrues when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition. Article 67 stipulates a period of twelve years when the tenancy is determined. Article 113 deals with suit for which no period of limitation is provided elsewhere in this Schedule. On the facts of this case it is clear that Article 66 would apply because no determination in this case is necessary and that is well settled now. Determination by notice under Section 106 of the Transfer of Property Act is no longer necessary.”

(emphasis supplied)

22. In view of the aforesaid position in law, there is no substance in the contentions on behalf of the Defendant that the issue of limitation was required to be framed.

⁶ AIR 1987 SC 2016.

23. On the aspect of bar to the institution of the suit under Section 69 (2) of the Act, 1932, the submission of Mr. Joshi is clearly misconceived. Suffice to note that, the bar under Section 69(2) of the Act, 1932 does not govern a suit for recovery of possession in enforcement of a statutory right. (**Raptakos Brett & Co Ltd Vs Ganesh Property**⁷ and **Haldiram Bhujawala and Anr Vs Anand Kumar Deepak Kumar & Anr**)⁸

24. The last aspect which requires consideration is the treatment to the contentions on behalf of the Defendant in regard to the proper valuation of the suit claim and the Court fees thereon. The learned Civil Judge was of the view that in the Plaint, the Plaintiff had undertaken to pay the additional Court fees as may be ordered and, therefore, the Plaintiff could be directed to pay requisite Court fees at the time of passing of judgment, and, resultantly, the issue of correct valuation of the suit claim and the Court fees thereon was not required to be framed.

25. From the perusal of the averments in the Plaint, especially paragraph 21 thereof, it becomes evident that the Plaintiff had valued the suit claim at Rs.6,30,000/-, being the amount of the compensation which the Defendant would be liable to pay and interest thereon. The Plaintiff does not seem to have taken into account the value of the suit claim for the purpose of eviction of the Defendant from the suit flat and

7 (1998) 7 SCC 184.

8 (2000) 3 SCC 250.

the Court fees required to be paid thereon under the provisions of the Maharashtra Court Fees Act, 1959.

26. Undoubtedly, the Court can direct the successful Plaintiff to pay deficit Court fees. Yet, the framing of an issue regarding the correct valuation of the suit claim and the Court fees that may be required to be paid thereon, would equip the Court to determine those aspects in a structured manner and the parties would also be in a better position to adduce evidence and address the Court, if required, on the issue of the correct valuation of the suit claim and the payment of the Court fees thereon.

27. Resultantly, this Court is of the view that the trial Court could not have declined to frame an additional issue on the aspect of the proper valuation of the suit claim and the Court fees required to be paid thereon.

28. Hence the Petition deserves to be partly allowed to the extent of framing additional issue in regard to proper valuation and Court fees only.

29. Hence, the following order:

- (i) Petition stands party allowed.
- (ii) The Application (Exhibit 45) stands party allowed.
- (iii) The following issue is framed as an additional issue:

Whether the Suit claim is properly valued and appropriate
Court fee is paid?

- (iv) The trial Court shall decide the aforesaid issue along with
all other issues at the time of final adjudication of the suit,
as expeditiously as possible.

[N. J. JAMADAR, J.]