

**ORDER BELOW EXH. 17 IN R.C.S. No.09/2017**

Shabir Rajak Naikavdi Vs. Ismail Husen Shaikh.

CNR –MHKO130009232016

01. This is the application of the plaintiff filed with request to frame additional issue below Exh. no. 14 as under:-

“Whether the plaintiff is entitled to alternative relief as prayed”.

02. It is specifically submitted that, predecessor of this Court while framing issues below Exh. no. 12 at Sr. no.9 has already framed the captioned issue. But subsequently while recasting the same issues below new Exh. no. 14, issue pertaining to alternative relief as already framed was omitted by the later Court. However, as the plaintiff has already prayed for alternative relief in his prayer clause, the same issue needs to be framed and hence, the current application is filed.

03. The application is objected by the defendant. It is submitted that, the Court has already fixed essential issues. Therefore, it is not necessary to frame additional issue and hence the defendant has submits to reject the application.

04. Heard Adv. Shri. S.T. Chavan for the plaintiff & Adv. Shri. S.S. Kestikar for the defendant.

05. Perused the record. It appears that, this is the suit for specific performance of contract. The plaintiff in the prayer clause has already sought for the prayer of alternative relief. Apart from that, in the provisions of Sec. 22 of the Specific Relief Act itself it is

incorporated that any person suing for the specific performance of contract for the transfer of immovable property may in appropriate case ask for alternative relief.

06. Thus, apart from the factual aspects of this case, considering the provision of the Act itself, the same is specifically provides for alternative relief. The record denotes that, predecessor of this Court while framing issue at first point has framed issue pertaining to the alternative relief which subsequently was omitted by the later predecessor of this Court while framing issue below Exh. no. 14. However, considering the factual aspects of this case, more particularly, the prayer clause and the provision of Sec. 22 of the Specific Relief Act, I think issue pertaining to the alternative relief needs to be framed. Hence, following order is passed:-

ORDER

1. The application at (Exh. 17) is allowed.
2. The additional issue as captioned is framed below Exh. No. 14 at Sr. No. 9/A.
3. In the peculiar facts and circumstances there is no order as the costs.

Kagal.
Date: 27/11/2023.

Sd/-.
(A. B. Jawale)
Jt. Civil Judge Jr. Division
Kagal.