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नियमित दिवाणी दावा क्र.६१/२०२१

महेश साठे

वि.

रंजन डोंबे, वगैरे

निशाणी क्रमांक १२६ वरील आदेश

प्रस्तुतचा अर्ज प्रतिवादी क्र.१ ने दिवाणी प्रक्रिया संहिता आदेश १४ नियम २ प्रमाणे मुदतीसंदर्भात प्राथमिक मुद्दा काढण्यासाठी दाखल केलेला आहे.

२. प्रतिवादीचे कथन आहे की, वादीने पूर्वी प्रतिवादी क्र.१ व इतरांविरुध्द नियमित दिवाणी दावा क्र.११/२०१३ हा दाखल केला होता. त्यामध्ये त्या दाव्यास दि. २०.०२.२०१३ रोजी कारण घडले असे नमुद केलेले होते. त्या दाव्यामध्ये निशाणी क्र.८७ वर प्रतिवादीने दिवाणी प्रक्रिया संहिता आदेश ७ नियम ११ प्रमाणे अर्ज दिला होता. तो अर्ज नामंजुर झाल्याने त्याविरुध्द प्रतिवादी क्र.१ यांनी मा. उच्च न्यायालयात दाद मागितली. मा. उच्च न्यायालयाच्या निकालाविरुध्द प्रतिवादी क्र.१ यांनी मा. सर्वोच्च न्यायालयात याचिका क्र.७०६४/२०२१ दाखल केली होती. तेथे वादी यांनी तो दावा काढुन नवीन दावा दाखल करण्याची परवानगी मागितली. त्यानंतर नियमित दिवाणी दावा क्र.११/२०१३ हा वादी यांनी मिळालेल्या परवानगीनुसार काढुन घेतला व प्रस्तुतचा दावा ६१/२०२१ हा दाखल केला. तथापि, दाव्यास कारण हे दि. २०.०२.२०१३ रोजीचेच दाखविलेले आहे. सबब, दावा मुदतबाह्य आहे या कारणावरुन प्रतिवादी क्र.१ ने निशाणी क्र.५९ नुसार वादपत्र नामंजुर करण्यासाठी दिवाणी प्रक्रिया संहिता आदेश ७ नियम ११ प्रमाणे अर्ज दाखल केला होता. सदरील अर्ज न्यायालयाने फेटाळल्याने प्रतिवादी क्र.१ यांनी मा.उच्च न्यायालयात याचिका क्र.१२३/२०२३ दाखल केली. त्यातील निर्णयाविरुध्द प्रतिवादी क्र.१ ने मा. सर्वोच्च न्यायालयात याचिका दाखल केली. सदरील याचिका दाखल करतेवेळी मा. सर्वोच्च न्यायालयाने सर्व

मुद्दे, मुदतीच्या मुद्दयासह, निर्णयासाठी खुले राहतील असे नमुद केले. सबब, प्रतिवादी क्र.१ ने प्रस्तुतचा अर्ज हा मुदतीचा मुद्दा प्राथमिक मुद्दा म्हणुन काढण्यासाठी व निर्णित करण्यासाठी दाखल केला आहे.

३. प्रतिवादी क्र.१ चे कथन आहे की, वादीने दाखल केलेला दावा हा दि. २०.०२.२०१३ रोजीचे कारण नमुद करुन सन २०२१ साली दाखल केलेला असल्याने प्रस्तुत दावा मुदतीत नाही, मुदतबाह्य आहे. करिता, मुदतीचा मुद्दा कायदेशीर असल्याने सर्वप्रथम दावा हा मुदतीत आहे अथवा नाही या मुद्दयावर चालविण्यात येवुन निकाली काढण्यात यावा. सबब, अर्ज मंजुर करण्यात येवुन दावा मुदतीत आहे का ? हा मुद्दा प्राथमिक मुद्दा म्हणुन काढण्यात यावा.

४. वादीने प्रस्तुत अर्जास त्यांचे म्हणणे (निशाणी क्र.१३०) दाखल केले. वादीने अर्जातील सर्व प्रतिकूल कथने नाकारली. वादीने कथन केले की, दिवाणी दावा क्र.११/२०१३ प्रलंबित असतांना मा. सर्वोच्च न्यायालयातील याचिका क्र. ७०६४/२०२१ मध्ये केलेल्या विनंतीनुसार व ती मान्य झाल्यानुसार वादीने प्रस्तुतचा दावा मुदतीत दाखल केलेला आहे. वादीचे कथन आहे की, निशाणी क्र.५९ वरील अर्जाचा निर्णय होवुन सदरील अर्ज नामंजुर झालेला आहे. त्या आदेशामध्ये मुदतीच्या कायद्याबाबत न्यायालयाने मत व्यक्त केलेले आहे. प्रतिवादी क्र.१ हे वारंवार अर्ज करुन दाव्याचे कामकाज लांबवित आहेत. करिता, अर्ज नामंजुर करण्यात यावा.

५. दोन्ही बाजुंचा युक्तिवाद ऐकला. निशाणी क्र.१३४ वरील पुरसीससह दाखल केलेला मा. सर्वोच्च न्यायालयाचा न्यायनिर्णय विचारात घेण्यात आला. सदरील न्यायनिर्णयावर भर देवुन प्रतिवादी क्र.१ तर्फे युक्तिवाद करण्यात आला की, न्यायालयाने दावा मुदतीत आहे काय ? यासंदर्भात प्राथमिक मुद्दा काढण्यात यावा. या अनुषंगाने मा. सर्वोच्च न्यायालयाचा न्यायनिर्णय येथे घेण्यात येतो.

६. प्रतिवादी क्र.१ तर्फे मा. सर्वोच्च न्यायालयाच्या ***सुखबिरी देवी व इतर***

<u>विरुध्द युनियन ऑफ इंडिया व इतर (दिवाणी अपील क्र.१०८३४/२०१० निकाल दि.२१.०९.२०२२)</u> या न्यायनिर्णयाचा आधार घेण्यात आला. प्रस्तुत न्यायनिर्णयातील परिच्छेद क्र.५ वरुन त्या प्रकरणातील बाबी स्पष्ट होतात. सदरील परिच्छेद क्र. ५ खालीलप्रमाणे –

*"**5.** For making a consideration as mentioned above, it is only opposite to make a brief reference to the facts involved in the case revealed from the averments in the plaint. The predecessor-in-interest of the appellants, viz., Shri Rama Nand, was the bhumidar of certain extent of agricultural land situated in village Naraina in Delhi. The said plot of agricultural land was acquired and Award No.19/75-76 was passed in relation to its acquisition on 09.01.1976. Subsequently, Rama Nand died, leaving behind his widow, two sons – Nahar Singh and Dhan Singh and four daughters – Smt. Shakuntala Devi, Smt. Krishna Devi, Smt. Parvati Devi and Smt. Santosh. Later, the widow of Shri Rama Nand also died. As per the policy, whereunder the land was acquired, the bhumidar was entitled to allotment of alternative residential plot in lieu of the acquired land. Later, the alternative plot was allotted by respondent Nos. 1 to 4 in the exclusive name of Dhan Singh, upon his production of registered Relinquishment Deed, as per letter No.F-31(11)/8/87/L&B/ALT/8226 dated 08.03.1991. The said letter dated 08.03.1991 to the 5th respondent for allotment of an alternative residential plot in his name, based on the Relinquishment Deed issued by the other legal heirs in his favour, came to the notice of Shri Nahar Singh, who thereupon filed an objection on 05.04.1991, before respondent Nos. 1-4 stating that alternative plot shall not be allotted in the exclusive name of Dhan Singh. Further, it was stated therein that the Relinquishment Deed produced before the Authorities was obtained fraudulently by Dhan Singh. Subsequently, Nahar Singh died on 14.05.1993. Thereupon, his widow and children stepped into his shoes. Furthermore, it is averred in the plaint that thereupon, the original plaintiff No.1 submitted similar representations to the Authorities in a bid to make them refrain from allotting the alternative plot in the exclusive name of the 5th*

respondent. It is thereafter that they instituted Suit No.410 of 2000, on 14.06.2000. All these averments are specifically made in the said plaint. At this juncture, it is to be noted that the four sisters of Nahar Singh who are also the legal heirs of deceased Rama Nand did not join them for instituting the suit against Dhan Singh (the 5th respondent in the Suit) and virtually, they were made proforma defendants therein.

७. परिच्छेद क्र.५ मधील बाबीच्या अनुषंगाने परिच्छेद क्र.२० मध्ये मा. सर्वोच्च न्यायालयाने त्यातील बाबींचे विवेचन केलेले आहे. परिच्छेद क्र.२७ मध्ये देखील त्यातील बाबींचे विवेचन करुन खालील न्यायालयाचे निकाल मा. सर्वोच्च न्यायालयाने कायम केलेला आहे. सदरील परिच्छेद क्र.२० व २७ खालीलप्रमाणे –

"**20.** *With the above observations and conclusions we will now, refer to the findings returned by the Trial Court on the stated preliminary issue of limitation, with a view to answer the question as to whether the impugned judgment confirming the First Appellate Court which, in turn, confirmed the judgment and decree of the Trial Court, requires intervention. In that regard it is only opposite to refer to the following recital from the Trial Court's judgment carrying plaint averments indicating the starting point of limitation and also findings on the preliminary issue:*

"As per averments made in para 8 of the plaint plaintiffs themselves have mentioned that their predecessor in interest alongwith defendants Nos.6 to 9 had executed relinquishment deed in favour of defendant No.5. Although they have also taken the plea that same was obtained defendant No.5 by playing fraud on the pretext of mutation of residential house in MCD records. Such averments made in the said para goes to show that Ld. Predecessor in interest of plaintiffs was very well aware about the execution of registered release deed since date of its execution. Even if it be considered that defendant No.5 had played fraud upon predecessor in interest of plaintiffs and the said fraud came to the knowledge of Sh. Nahar Singh through letter dated 08.03.1991 then the period of limitation for seeking said relinquishment deed as null and void started the said date i.e. 08.03.1991. The reason being that plaintiffs

are seeking declaration to the effect that they are co-owners of the suit plot and defendant No.5 is not the exclusive owner thereof. The said relief can be granted by the court only when the relinquishment deed dated 21.10.1985 is held to be illegal null and void and not binding upon them. In other words, unless and until the said relinquishment deed is held to be illegal and not binding on the executants, the plaintiffs cannot be declared as co-owners of the suit plot along with defendants No. 5 to 9. Therefore, the plaintiffs are also seeking declaration regarding cancellation of release deed dated 21.10.1985 indirectly which is being alleged as having been obtained through fraud and which fact admittedly came to their knowledge on 08.03.1991. Plaintiffs are claiming their title through Sh. Nahar Singh one of the legal heirs of deceased Sh. Rama Nand. Once Sh. Nahar Singh came to know about the fraud and illegality of the release deed the period of limitation started running from the said date of cancellation and mere factum regarding death of Sh. Nahar Singh would not stop the period of limitation once it has been started. Plaintiffs have stepped into the shoes of Sh. Nahar Singh and were, therefore, required to challenge the release deed within the period of limitation prescribed by law. It is needless to mention here that period of limitation prescribed for filing such a suit for declaration challenging the release deed in question is three years from the date of accrual of cause of action which in the present case arose,in the opinion of the court, on 08.03.1991 when Sh. Nahar Singh came to know about the alleged fraud being played by defendant No.5 upon him along with defendants No. 6 to 9. The present suit has been filed only on 14.06.2000, therefore, the present suit is barred by limitation. Hence, court finds merit in the arguments raised on behalf of defendants that the present suit is not maintainable being barred by limitation. The submissions made on behalf of plaintiffs that there were several representations being submitted before various Authorities by plaintiffs from time to time and period of limitation was continuing during all these period is without any merit as mere sending representations on behalf of plaintiffs with authorities cannot extend period of limitation. The plaintiffs slept over their right during the whole period of limitation and therefore they cannot be permitted to plead that the present suit

is within the period of limitation due to sending of representations with the departments. Hence, for all these reasons it is held that the present suit is barred by limitation. Accordingly, issue is decided against the plaintiffs."

"**27.** *The relief sought for, in suit No.410/2000 would reveal that the first prayer, which is the main prayer, is declaratory in nature. Even according to the plaintiffs, as revealed from the plaint the second prayer (extracted hereinbefore) is only consequential relief. A perusal of the same would undoubtedly show that it is consequential and not an independent one and therefore the courts below are right in holding that the said prayer is grantable only if the first prayer is granted. In this case based on the determination on the preliminary issue of limitation and in accordance with the decision on that preliminary issue the suit was dismissed. As held by the three-judge Bench in the decision in* ***Nusli Neville Wadia's case (supra)*** *the provisions under Order XIV Rule 2 (1) and Rule 2 (2) (b) permit to deal with and dispose of a suit in accordance with the decision on the preliminary issue. In the case on hand in view of the nature of the finding on the preliminary issue and the consequential consideration of the suit in terms of Order XIV Rule 2 (2) (b) and taking note of the fact that the suit do not survive after such consideration we find no reason to consider the contention of the appellants with reference to Order VII Rule 11 based on the decisions relied on by them and referred hereinbefore. So also, the contentions of the appellants based on Articles 17 and 65 also would pale into insignificance and warrant no consideration at all, in the circumstances.* "

८. प्राथमिक मुद्द्यासंदर्भात मा. सर्वोच्च न्यायालयाने परिच्छेद क्र.१६ ते १९ मध्ये विवेचन केलेले आहे, ते खालीलप्रमाणे –

"**16.** *Now, we will consider the first question: "Whether the issue of limitation can be determined as a preliminary issue under Order XIV, Rule 2, CPC". It is no longer res integra. In the decision in* ***Mongin Realty and Build Well Private Limited V. Manik Sethi,*** *even while holding that the course of action followed by the learned Trial Judge of directing the parties to address arguments on the issue of*

limitation as irregular since it being a case where adduction of evidence was required, a two-Judge Bench of this Court referred to a three-Judge Bench decision of this Court in ***Nusli Neville Wadia Vs. Ivory Properties*** *observing that the issue therein was whether the issue of limitation could be determined as a preliminary issue under Order XIV, Rule 2, CPC. After taking note of the fact that going by the decision in* ***Nusli Neville Wadia's*** *case, in a case where question of limitation could be decided based on admitted facts it could be decided as a preliminary issue under Order XIV, Rule 2 (2) (b), CPC., the two-Judge Bench held that in the case before their Lordships the question of limitation could not have been decided as a preliminary issue under Order XIV, Rule 2 of CPC as determination of the issue of limitation in that case was not a pure question of law. In the said contextual situation it is worthy and appropriate to refer to paragraphs 51, in so far as it is relevant, and 52 of the decision in* ***Nusli Neville Wadia's*** *case and they read thus :-*

51*.[…] As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and is the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2 . In Order 14 Rule 2 (1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2 (2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.*

52. […] *In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2 (2) (b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2 (2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding*

on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed and the question of law is dependent upon the outcome of the investigation of the facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976." (Emphasis added)

"17. *In view of the legal position obtained from the decision in* ***Nusli Neville Wadia's*** *case the following decisions also assume relevance. In the decision in* ***National Insurance Co. Ltd. Vs. Rattani*** *this Court held that an admission made in the pleadings by a party is admissible in evidence proprio vigore. Equally well settled is the principle of law that an admission made by a party in his pleadings is admissible against him proprio vigore (see the decisions in* ***Ranganayakamma Vs. K. S. Prakash (Dead) By Lrs. And Vimal Chand Ghevarchand Jain V. Ramakant Eknath Jadoo.*** *"*

"18. *In the context of the usage of the expression "admitted facts" in paragraph 52 of the decision in* ***Nusli Neville Wadia's case*** *and the word 'admission' employed the* ***National Insurance Co. Ltd.*** *Case a reference to Sections 17, 18 and 58 of the Indian Evidence Act would not be inappropriate. A conjoint reading of the said provisions would reveal that "statements' by a party to proceedings are admissions and facts admitted need not be proved.*"

"19. *We referred to the said provisions and decisions only to stress upon the point that the appellants cannot legally have any dispute or grievance in taking their statements in the plaint capable of determining the starting point of limitation for the purpose of application of Order XIV, Rule 2 (2) (b) of the CPC. Though, limitation is a mixed question of law and facts it will shed the said character and would get confined to one of question of law when the foundational fact (s), determining the starting point of limitation is vividly and specifically made in the plaint averments. In such a circumstance, if the Court concerned is of the opinion that limitation could be framed as a preliminary point and it warrants postponement of settlement of other issues till determination of that issue, it may*

frame the same as a preliminary issue and may deal with the suit only in accordance with the decision on that issue. It cannot be said that such an approach is impermissible in law and in fact, it is perfectly permissible under Order XIV, Rule 2 (2) (b), CPC and legal in such circumstances. In short, in view of the decisions and the provisions, referred above, it is clear that the issue limitation can be framed and determined as a preliminary issue under Order XIV, Rule 2 (2) (b), CPC in a case where it can be decided on admitted facts."

९. मा. सर्वोच्च न्यायालयाने परिच्छेद क्र.२३ मध्ये पुढीलप्रमाणे विवेचन केलेले आहे.

"**23.** *The findings of the Trial Court with respect to preliminary issue of limitation are based on the relevant dates revealed from the pleadings of the plaintiffs in the plaint itself. True that in the plaint it is repeatedly alleged that the relinquishment deed was obtained fraudulently by the 5th respondent. However, conspicuously its date was not mentioned. But then the plaint averment is that their predecessor-in-interest Shri Nahar Singh, on coming to know about the use of the said Relinquishment Deed, had preferred an objection on 05.04.1991 to the authorities whereunder he sought not only for its cancellation but also on the ground of obtainment by playing fraud for refraining them from issuing allotment of the alternative plot in the exclusive name of the 5th respondent. In this context it is also relevant to note that going by the plaint averments after the death of Shri Nahar Singh on 14.05.1993 the original first plaintiff, who is none other than one of the sons of Shri Nahar Singh, filed representations on the lines of the objection taken up by his father. Even if non-mentioning of the date of Relinquishment Deed is not taken as purposeful that cannot and will not therefore save the plaintiffs from the inescapable, adverse finding on the question of limitation to bring in a suit against the said Relinquishment Deed. Evidently, Suit No.410 of 2000 was filed only on 14.06.2000. Thus, it is very much clear from the plaint averments that the Relinquishment Deed is anterior to the date of letter of intimation to the 5th respondent (08.03.1991) and obviously, the date of objection*

against the same was firstly preferred by deceased Nahar Singh Viz., 05.04.1991. Evidently, the aforesaid two dates specifically mentioned in the plaint were taken into account by the Trial Court as also by the First Appellate Court and the High Court in the matter of consideration of the question "whether the suit was barred by limitation." The manner of consideration by the Trial Court which ultimately resulted in dismissal of suit No.410/2000 would reveal, as stated hereinbefore, that it had determined the preliminary issue regarding the period of limitation with reference to the averments in the plaint. The dismissal of the suit was in accordance with the decision on the said preliminary issue. Since we have already extracted the operative portion of the Trial Court judgment, we do not think it necessary to refer to its reason and findings. **"**

१०. उपरोक्त न्यायनिर्णयातील बाबीवरुन हे स्पष्ट होते की, मुदतीचा मुद्दा निर्णित करताना त्या दाव्यातील बाबींचा विचार करण्यात आला होता. त्या दाव्यामध्ये न्यायालयाने दोन्ही बाजुंची कथने विचारात घेवुन सर्वप्रथम मुदतीचा मुद्दा निर्णित केला होता व त्याविरुध्द मा. सर्वोच्च न्यायालयापर्यंत दाद मागण्यात आलेली होती. या बाबीच्या अनुषंगाने या प्रकरणातील परिस्थिती पहावी लागेल.

११. ही बाब तथ्यपूर्ण आहे की, वादीने यापूर्वी नियमित दिवाणी दावा क्र. ११/२०१३ दाखल केला होता. त्यातील अर्जाच्या आदेशाविरोधात प्रतिवादी क्र. १ हे मा. सर्वोच्च न्यायालयात गेले व त्यांनी याचिका क्र.७०६४/२०२१ दाखल केली होती. त्यातील दि ३०.०९.२०२१ रोजीचा आदेश खालीलप्रमाणे –

> *"In view of what transpired in the hearing, learned counsel for the respondent No.1 on instructions state that he may be permitted to withdraw the suit itself filed by him with liberty to file an appropriate fresh suit in accordance with law. Liberty granted".*

१२. वादीने पूर्वीचा दावा काढुन घेवुन कायद्यातील तरतुदीनुसार नवीन दावा दाखल करण्याची परवानगी मा. सर्वोच्च न्यायालयात मागितली होती व मा. सर्वोच्च

न्यायालयाने ती वादीस दिली. त्या अनुषंगाने वादीने प्रस्तुतचा दावा दाखल केलेला आहे. या अनुषंगाने निशाणी क्र.५९ वरील प्रतिवादी क्र.१ चा अर्ज विचारात घेण्यात आला. त्यामध्ये मुदतीच्या कायद्याबाबत प्रतिवादी क्र.१ ने आक्षेप घेतलेला आहे असे परिच्छेद क्र.११ मधील प्रतिवादी क्र.१ च्या कथनावरुन दिसते. परिच्छेद क्र.११ मध्ये प्रतिवादी क्र.१ ने दिवाणी प्रक्रिया संहिता आदेश ७ नियम ११ (ड) प्रमाणे हरकत घेतलेली होती. सदरील हरकत निकालात काढण्यात आलेली आहे. उपरोक्त नियमाप्रमाणे/तरतुदीप्रमाणे हरकत निकाली काढत असतांना वादपत्रातील कथने विचारात घेणे आवश्यक ठरते. त्याप्रमाणे ती घेण्यात आलेली आहेत. प्रतिवादी क्र.१ ने दाखल केलेल्या न्यायनिर्णयातील दाव्यात देखील वादपत्रातील कथने विचारात घेवुन प्राथमिक मुद्दा काढण्यात आलेला होता. त्याचा निर्णय मा. सर्वोच्च न्यायालयापर्यंत झालेला आहे.

१३. पूर्वीचा प्रलंबित दावा काढुन घेवुन कायदेशीर तरतुदीनुसार दावा दाखल करण्याची परवानगी मा. सर्वोच्च न्यायालयाने वादीस दिलेली आहे. प्रस्तुतचा दावा हा दि. १३.१०.२०२१ रोजी दाखल केलेला आहे. प्रतिवादी क्र.१ तर्फे मा. सर्वोच्च न्यायालयातील याचिका क्र.४९२९९/२०२३ या आदेशाचा आधार घेवुन युक्तिवाद करण्यात आला की, मुदतीचा मुद्दा हा निर्णयासाठी खुला ठेवण्यात आलेला आहे. सदरील बाब पाहता मा. सर्वोच्च न्यायालयाचे **मुखबिर देवी** या प्रकरणातील न्यायनिर्णयानुसार प्रस्तुत प्रकरणात मुदतीचा प्राथमिक मुद्दा काढता येईल काय ? हा प्रश्न उपस्थित होतो. **मुखबिर देवी** या प्रकरणातील बाबी व प्रस्तुत प्रकरणातील बाबी या भिन्न आहेत. पूर्वीचा दावा काढुन घेवुन कायदेशीर तरतुदीनुसार नवीन दावा दाखल करण्याची परवानगी दिल्याने हा दावा मुदतीत आहे अथवा नाही हा प्रश्न प्राथमिक मुद्दा होवु शकत नाही. इतर मुद्दयांसमवेत मुदतीचा मुद्दा देखील निकाली काढणे योग्य ठरेल. या संदर्भात निशाणी क्र.५९ नुसार झालेला आदेश ग्राह्य धरणे आवश्यक आहे. त्यातील दिवाणी प्रक्रिया संहिता आदेश ७ नियम ११ (ड) प्रमाणेचा मुद्दा निर्णित करताना वादपत्रातील कथने विचारात घेण्यात आल्याचे दिसते. दिवाणी प्रक्रिया संहिता आदेश

१४ नियम २ प्रमाणे मुदतीचा प्राथमिक मुद्दा निर्णित करीत असतांना देखील वादपत्र व कैफियतीमधील कथने विचारात घ्यावी लागतील. वादपत्र व कैफियत यातील कथने पाहता तसेच पूर्वीचा दावा परवानगी घेवुन काढुन घेतल्यानंतर प्रस्तुतचा दावा दाखल केलेला आहे ही बाब पाहता मुदतीचा प्राथमिक मुद्दा काढण्याची आवश्यकता दिसत नाही. पूर्वीच्या दाव्यास घडलेले कारण या दाव्यात दाखविणे क्रमप्राप्त ठरते कारण दावा त्याच कारणावर दाखल झालेला असुन, पक्षकारांमधील मुळ मुद्दा, म्हणजेच जमिनीच्या मालकी संदर्भात, निर्णित करणे हा प्रश्न उपस्थित होतो. करिता, दिवाणी प्रक्रिया संहिता आदेश १४ नियम २ प्रमाणे मुदतीचा मुद्दा हा प्राथमिक मुद्दा काढुन निर्णित करण्याची आवश्यकता वाटत नाही. करिता, अर्ज नामंजूर होण्यास पात्र आहे. करिता, खालील आदेश.

<u>आदेश</u>

अर्ज नामंजूर करण्यात येतो.

(खुल्या न्यायालयात घोषित)

स्वाक्षरीत/–

(नीलेश सु. बुद्रुक)

दि. १४.०७.२०२५. सह दिवाणी न्यायाधीश वरिष्ठ स्तर,

पंढरपूर.

CERTIFICATE

I affirm that the contents of this PDF file are same word to word as per the original.

(a)	Name of the Stenographer	:	Suresh M. Malkapalli
(b)	Court	:	Jt. Civil Judge (S.D.), Pandharpur.
(c)	Signed by P.O. On	:	19.07.2025
(d)	Uploaded on	:	28.07.2025