

CNR No. MHSCA 20029082019
IN THE COURT OF SMALL CAUSES AT MUMBAI
ORDER BELOW EXHIBIT –42
IN
R.A.D. SUIT NO. 1476 OF 2019

Miss. Vijaya Dattatraya Bhojane ... Plaintiff
V/s
1. Mr. Rajan Thomas & Ors. ... Defendants

Mr. Atul S. Tungare and
Mrs. Megha M. Raorane : Learned Advocate for Plaintiff.
Shri. S. B. Sabnis : learned advocate for defendant No.1.

Coram : R. U. Shaikh, Judge
C. R. No.16
Date :28/03/2024

ORDER :

1. This application is taken out by defendant No.1 for recast of issues thereby for addition of issues related to the maintainability of the suit and limitation.
2. As per reply Exh. 43, plaintiff opposed the request made. Whereas defendants No.2 and 3 as per their handwritten reply supported the application.
3. I have heard both the parties.
4. The base for framing issues is pleadings. More particularly material proposition asserted by one party and denied by other party. The learned advocate for defendant No.1 draw attention of the Court towards pleadings in the written statement. Therein defendant No.1 took stand that suit is not maintainable and barred by limitation. As per learned advocate for defendant No.1 issue ought to have been framed on the basis of these pleadings. On the other hand, as per learned advocate for plaintiff, this is delaying tactic on the part of the defendant No.1. She draw

attention of the Court towards the date of framing of issues, date of filing of evidence and date of filing additional affidavit. As per learned advocate for plaintiff, this application is filed only to prolong the trial.

5. May be the objection raised by the plaintiff is having merit. However, for framing issue Order XIV Rule 1 of Code of Civil Procedure, 1908 is required to follow. If there are certain legal objections raised in the written statement, those must form part of issues. As pointed out by the learned advocate for defendant No.1 in the written statement, defendant No.1 has specifically objected to the suit on its tenability and on limitation count. As per learned advocate for plaintiff there are no details how suit is untenable or barred by limitation. So mere vague pleadings are not sufficient to frame additional issue. This may be true to certain extent. However, looking to the claim, those issues go to the root of the case. Therefore, even if there is casual reference in the written statement, those material propositions must result into issues. So the request made by the defendant No.1 is required to be accepted. Accordingly, I pass the following order.

ORDER

1. Application [Exh. 42] is allowed.
2. Following additional issues are framed :
 1. Is the suit tenable?
 2. Is the suit barred by limitation?
3. Plaintiff is at liberty to lead additional evidence.
4. Parties to note.

Date : 28/03/2024

[R. U. Shaikh]
Judge, C. R. No.16