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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 624 OF 2024**

Shyam Ramlal Thapar ... Appellant
vs.
Rajendra Tukaram Patil and Anr ... Respondents

Ms. Priyanka Kothari i/b. Mr. Sanjay Sinha for Appellant.

CORAM : GAURI GODSE, J.

DATED : 11th DECEMBER 2024

ORDER:

1. Heard learned counsel for the appellant. The second appeal is admitted on the following substantial questions of law:

I) When defendant no.1 had raised a specific ground on the suit being barred by limitation, whether it was necessary for the trial court to frame the issue on the suit being barred by limitation?

II) Whether the findings recorded by the trial court in paragraph no. 17 of the judgment on the point of limitation would be sustainable without framing the issue and permitting the parties to lead evidence in as much as the issue of

limitation would be a mix question of law and fact?

III) Whether the first appellate court erred in not considering the issue regarding the suit being barred by limitation though the specific ground was raised on behalf of defendant no.1 on the suit being barred by limitation?

IV) Whether both the courts erred in ignoring that the application filed by defendant no.1, for rejection of the plaint under Order VII Rule 11 (d) of the Civil Procedure Code, 1980 ('CPC') was dismissed only on the ground that the issue of limitation would be a mixed question of law and fact which could not be decided at the stage of Order VII Rule 11 of the CPC. Hence, whether it was necessary for both the courts to frame proper issues on limitation and examine the same after giving an opportunity to both parties to lead evidence?

V) In view of the ground raised on the suit being barred by limitation, whether the first appellate court ought to have exercised power under Rule 23-A read with Rule 25 of Order XLI of CPC by either remitting the matter to the trial court or calling for findings on the issue of limitation?

2. In addition to Court notice, learned advocate for the appellant to serve the respondents, by private notice and file affidavit of

service.

3. Call for records and proceedings.
4. Printing is dispensed with.
5. Learned advocate for the appellant shall file private paper-book within a period of one year from today.

(GAURI GODSE, J.)