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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 29th April, 2025**

+ CM(M) 634/2025 & CM APPL. 20189/2025

RAM RAGHUBIR SINGHALPetitioner

Through: Mr. Manu Sishodia, Advocate.

versus

USHA SAINI & ANR.Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a suit seeking eviction, damages, *mesne* profit and injunction.
2. Issues were framed by the learned Trial Court on 07.12.2023. It also included following two issues:-
“(i) Whether the present suit is barred by the provisions of Order II R 2 of CPC or Section 11 of CPC? (OPD)
(ii) Whether the present suit is barred by limitation? (OPD)”
3. An application was moved by the defendant/petitioner before the learned Trial Court with request to treat the abovesaid issues as ‘*preliminary issues*’ and such request has been declined by the learned Trial Court.
4. Such order is under challenge.
5. This Court has seen the reasonings given by the learned Trial Court. It noted that, generally, such kind of issues, including issue of limitation, is a mixed question of fact and law, which can be decided only after evidence is adduced by the parties. Even with respect to the question of bar in context of Order II Rule 2 CPC, the learned Trial Court observed that it could also be evaluated after the comparison of the previous pleadings and, therefore, declined the request made by the defendant/petitioner.
6. Admittedly, there is no straight jacket formula to assess as to which



issue can be taken as a preliminary issue.

7. At times, because of the intricacy of the facts and the complexity of the matter, these cannot be adjudicated, appropriately, without giving an opportunity of leading evidence to the parties. The reasonings given by the learned Trial Court does not, therefore, call for any interference by invoking supervisory powers of this Court under Article 227 of the Constitution of India, particularly, when this Court does not see any illegality or perversity in the abovesaid order.

8. The petition is, accordingly, dismissed.

9. All the rights and contentions of the parties are left open and it is also clarified that this Court has not made any observation, either way, with respect to the contentions raised before this Court.

10. Before parting, it needs to be emphasized that, according to learned counsel for the petitioner, the petitioner is an octogenarian and though issues were framed on 11.07.2024, the plaintiffs/respondents are demonstrating complete inaction as no evidence has so far been recorded before the learned Trial Court.

11. Keeping in mind the abovesaid aspect related to the age of the defendant, learned Trial Court is requested to make best endeavour to dispose of the abovesaid suit as expeditiously as possible.

12. The petition stands disposed of in aforesaid terms.

13. All the pending applications also stand disposed of accordingly.

(MANOJ JAIN)
JUDGE

APRIL 29, 2025/st/pb