

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO. 4758 OF 2015

Shirish N. Bhosale .. Petitioner
vs.
Dr. (Mrs.) Sanjyot S. Mankame .. Respondent

Mr. N. V. Bandiwadekar i/b Mr. Sagar Mane for the Petitioner.
Mr. Umesh R. Mankapure for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 28 April, 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the respondents, Rule is made returnable forthwith.

2] Notice was issued in this matter on the basis of the decision of the Hon'ble Supreme Court in case of *Kamalakar Eknath Salunkhe vs. Baburav Vishnu Javalkar & ors*¹. However, the Supreme Court in its later judgment, in case of *Foreshore Cooperative Housing Society Limited Vs. Praveen D. Desai (Dead) through Lrs. and ors*², has held that its earlier decision in case of *Kamalakar Salunkhe (supra)*, cannot be said to have laid the correct position in law.

3] By the impugned order dated 11 December 2014, the Joint Civil Judge, Senior Division at Solapur has framed a preliminary issue as to whether the suit has been instituted within the prescribed period of limitation. The Supreme Court, in case of *Kamalakar Salunkhe (supra)*, has held that the issue of this nature would be framed as a preliminary issue under Section 9A of the Civil

1 Civil Appeal No.1085 of 2015 decided on 12 January 2015.

2 2015 SCC Online SC 302

Procedure Code, 1908 (CPC), as applicable to the State of Maharashtra. In the case of *Foreshore Cooperative Housing Society Limited (supra)*, however, the Supreme Court has held that the issue of limitation is an issue, which goes to the root of jurisdiction and same can be framed as a preliminary issue under Section 9A of the CPC.

5] Section 9A of the CPC as applicable to the State of Maharashtra, however, applies, where at the hearing of any application for granting or setting aside an order granting any interim relief, the objection is taken to the jurisdiction of the Court to entertain the suit. In the present case, it is not clear as to whether the plaintiff has sought for any interim reliefs.

6] Therefore, if the plaintiff in the suit has indeed applied for interim relief, then the issue of limitation is required to be framed as a preliminary issue under Section 9A of the CPC and to that extent, there is no necessity to interfere with the impugned order. If however, the plaintiff has not applied for any interim relief at all in the suit, then there is no requirement for framing the issue of limitation as a preliminary issue. The issue of limitation can always, in that situation, be taken up alongwith all other issues, which will arise in the suit, in aid of its final disposal. The impugned order, to that extent, shall have to be modified.

7] Accordingly, this petition is disposed of with a direction to the learned Joint Civil Judge to ascertain whether the plaintiff has at all applied for any interim relief in the suit. If so, the impugned order

shall stand upheld. If however, the plaintiff has not applied for any interim relief at all, then the issue of limitation shall be taken up by the learned Joint Civil Judge alongwith all other issues, which will arise in the suit, in the aid of its final disposal.

8] Rule is, accordingly, disposed of in the aforesaid terms. There shall be no order as to costs.

9] Parties are at liberty to place an authenticated copy of this order before the learned Joint Civil Judge and all concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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