

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10299 OF 2015

Walchand College of Engineering

Through its Director,

Dr. Gajanan Vaijanath Parishwad

: Petitioner.

Versus

Sriram Gopal Kanitkar and anr.

: Respondents.

Mr. A G Damle, Senior Advocate a/w Mr. Harsh Shende i/by Mr. Santosh Sawant for the Petitioner.

Mr. R S Apte, Senior Advocate, i/by Mr. P D Pise for the Respondent No.2.

CORAM : R. M. SAVANT, J.

DATE : 26th October 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 24/08/2015 passed by the learned Civil Judge, Senior Division, Sangli by which order the application (Exhibit 55) filed by the Defendant Nos. 1 and 2 i.e. the Respondent Nos.1 and 2 herein came to be partly allowed and the directions as contained in the operative part of the said order were issued. The said directions are reproduced herein under for the sake of ready reference :-

“1) Application (Exhibit 55) is partly allowed.

2) Both the parties are directed to lead oral as well as documentary evidence on the point of preliminary issues of jurisdiction.

3) Remaining relief sought for by the defendants are rejected.”

2 The said order dated 24/08/2015 is preceded by the order dated 30/03/2015 by which order a preliminary issue effect was framed by the Trial Court which was pursuant to the application (Exhibit 23) filed by the Defendant No.1 invoking Section 9A of the Code of Civil Procedure. In the said order dated 30/03/2015 the Trial Court after framing the preliminary issue has directed the advocate for the Plaintiff and the Defendants to argue the application of the Plaintiff filed under Section 9-A(2) of the Code of Civil Procedure and further to lead evidence if any on the preliminary issue.

3 By the impugned order dated 24/08/2015 what has been done by the Trial Court is directing the parties to lead oral as well as documentary evidence on the point of preliminary issue of jurisdiction.

4 In so far as Section 9-A(2) is concerned, pending the adjudication of the preliminary issue, it is always open for the Plaintiff to apply for interim relief under Section 9-A(2) of the Code, and the Trial Court is also required to consider such an application.

5 The order dated 24/08/2015 is sought to be assailed on the ground that the application under Section 9-A(2) of the Code is now relegated to the background and it is only the preliminary issue under Section 9-A of the

Code that would be taken up for hearing.

6 In my view, it is not necessary to interfere with the impugned order dated 24/08/2015 at this stage. It would be just and proper to direct the Trial Court to hear and decide the preliminary issue under Section 9-A latest by 31/01/2016. Notwithstanding the observations made in the impugned order dated 24/08/2015, it would always be open for the Trial Court to consider the application under Section 9-A(2) if it so deems it appropriate and the impugned order should not be construed as any impediment in its way to consider the said application. With the aforesaid observations, the above Writ Petition is disposed of.

[R.M.SAVANT, J]