

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 853 OF 2014****IN****NOTICE OF MOTION NO. 2619 OF 2013****IN****S.C.SUIT NO. 3220 OF 2013****ALONGWITH****CIVIL APPLICATION NO. 1029 OF 2014****IN****APPEAL FROM ORDER NO. 853 OF 2014****IN****NOTICE OF MOTION NO. 2619 OF 2013****IN****S.C.SUIT NO. 3220 OF 2013****Mr.Mohd. Rafique Mohd. Hussain Tinwala Appellant****VERSUS****M/s.S.S.Enterprises & Ors. Respondents**

Mr.Aftab Khan, i/b. Ms.Anjali Awasthi for the Appellant.

Mr.R.A.Shaikh for Respondent Nos. 1 to 5.

Mr.Kamlesh Ghumre, a/w. Ms.Sonali Jadhav for Respondent No.7.

CORAM : R.D. DHANUKA, J.**DATED : 17th NOVEMBER, 2015****P.C.**

By this appeal, the appellant has impugned the ad-interim order dated 4th December, 2013 passed by the learned Judge of City Civil Court, Bombay granting ad-interim order in terms of prayer clauses (a) and (b) of the notice of motion. The said ad-interim order is in force till today as stated by the learned counsel for the parties.

2. Learned counsel appearing for the appellant states that the learned trial Judge has not disposed of the said notice of motion though it is pending since 2013 and has also not decided the preliminary issue raised by the defendants under section 9(A) though the said issue has been framed.

3. Mr. Shaikh, learned counsel appearing for the respondent no.1 has no objection if the notice of motion is heard expeditiously and the pending issue raised by the defendant no.1 under section 9(A) is decided before disposal of the Notice of Motion. Statement is accepted.

4. Though the impugned order is passed on 4th December, 2013, the same is in operation till date. In my view, it would be more appropriate if the trial court decides the preliminary issue under section 9(A) expeditiously and based thereon thereafter dispose of the notice of motion. I, therefore, pass the following order :-

(a) The trial court is directed to decide the preliminary objection made under section 9(A) within two months from today and pass an appropriate order. If the trial court finds that it has jurisdiction to entertain the suit, the trial court shall also dispose of the notice of motion within two months from the date of taking such decision on the preliminary issue.

(b) It is made clear that the observations made by the trial court in the impugned order are tentative and the trial court shall decide the matter without being influenced by the observations made in the said ad-interim order passed by the trial court.

5. Appeal is disposed of in the aforesaid terms.
6. In view of the disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]