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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 91 OF 2010

Shri Anil Ramrao Gogawale and others .. Applicants

Vs.

Shri Ankush Vijaykumar Mehta and others .. Respondents

Mr.G.S.Godbole, Senior Advocate a/w Mr.Drupad Patil i/b
Mr.A.B.Tajane, Advocate for the Applicants.

Mr.PS.Dani, Senior Advocate i/b Mr.Pankaj Das, Advocate for
Respondents No. 1 & 5 to 9.

Mr.A.P.Kulkarni, Advocate for Respondent No.2.

CORAM : R. G. KETKAR, J.

DATE : 28th JULY, 2015

P.C. :

. Heard Mr.G.S.Godbole, learned Senior Counsel for the
applicants, Mr.PS.Dani, learned Senior Counsel for the respondents
No.1 & 5 to 9, Mr.A.P.Kulkarni, learned Counsel for respondent No.2
at length.

2. By this Application under Section 115 of the Code of
Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No. 1 to
3 have challenged the judgment and order dated 06/10/2009 passed
by the learned 8th Joint Civil Judge, Senior Division, Pune below
Exhibit 43 in Special Civil Suit No. 909 of 2008. By that order, the
learned trial Judge rejected the application filed by defendants No. 1
to 3 under Order 7 Rule 11(a) & (d) of C.P.C.

3. Defendants No. 1 to 3 took out that application on the ground that the Suit does not disclose any cause of action as contemplated by Order 7 Rule 11(a) of C.P.C. as also is barred by law by limitation. Apart from that, Suit also suffers from want of giving notice under Section 487 of the Maharashtra Provincial Corporations Act,

4. Mr.Godbole states that defendants No. 1 to 3 have filed written statement dated 16/09/2008 at Exhibit 62 in the Suit raising contentions that have been raised in the application filed at Exhibit 43. Upon taking instructions from applicant No.1 who is present in the Court, he states that applicants are not pressing this Application with liberty to request the trial Court to frame issues based on the contentions raised in the written statement as regards cause of action as also that the Suit is barred by limitation and suffers from not giving notice under Section 487 of the Act.

5. In view thereof, Application is disposed of as not pressed with liberty as prayed for. It is made clear that I have not examined merits of the proposed proceedings. All the contentions of the parties in that regard are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)