

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

APPEAL FROM ORDER (L) NO. 26085 OF 2015
WITH
CIVIL APPLICATION (L) NO. 26088 OF 2015
IN
NOTICE OF MOTION NO. 973 OF 2014
IN
SUIT NO. 526 OF 2014

M/s. Susmita Constructions Pvt. Ltd. .. Appellant
Vs.
Mrs. Vijaya Pravinchandra Sheth & Ors. .. Respondents

Mr. Girish Godbole a/w. Yayah Gogaria i/b Sonal Doshi & Co. for the Appellant.

Mr. P. J. Thorat for the Respondents.

CORAM : **MRS. ROSHAN DALVI, J.**
DATE : **28th SEPTEMBER, 2015.**

P.C.

1. The impugned order is an interim order dismissing the plaintiff's Notice of Motion on merits. However an issue of limitation as a jurisdictional issue under Section 9A of the CPC has been raised in the written statement and the affidavit-in-reply to the Notice of Motion which adopts the written statement. The learned Judge has considered the extreme delay. The learned Judge has also recorded the defence of limitation. Hence the issue of limitation would have to be framed before the merits of the plaintiff's prima facie case is considered. That has not been done. The appeal which challenges the order passed in the Notice of Motion on merits would also require merits to be considered. That cannot be considered until it is seen that the plaintiff's suit is not barred by limitation. Hence the ad interim order of injunction must continue pending the determination of the issue of limitation. Consequently the impugned order is set aside. The learned Judge shall frame and decide the issue of limitation as a jurisdictional issue under Section 9A of the CPC. Until the jurisdictional

issue is decided, the ad interim injunction shall continue.

2. The Appeal from Order and the Civil Application are disposed of accordingly.

(ROSHAN DALVI J.)

C E R T I F I C A T E

"I certify that this Order uploaded is a true and correct copy
of original signed Order."