

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO.226 OF 2015**

|                                                   |          |                    |
|---------------------------------------------------|----------|--------------------|
| <b>M/s Lavasa Corporation Ltd., a</b>             | <b>)</b> |                    |
| <b>Company registered under the</b>               | <b>)</b> |                    |
| <b>Companies Act, 1956, having its office at)</b> | <b>)</b> |                    |
| <b>Plot No.101,Town Hall, Portfino</b>            | <b>)</b> |                    |
| <b>Street, At Post, Dasve, Taluka Mulshi,</b>     | <b>)</b> |                    |
| <b>District-Pune-412 112, through its duly</b>    | <b>)</b> |                    |
| <b>constituted Attorney and authorised</b>        | <b>)</b> |                    |
| <b>Signatory, Mr. Sunil Karansingh</b>            | <b>)</b> |                    |
| <b>Khadka aged about 51 years, Occupation)</b>    | <b>)</b> |                    |
| <b>Service having address as above</b>            | <b>)</b> | <b>..Applicant</b> |

**Vs.**

|                                             |          |  |
|---------------------------------------------|----------|--|
| <b>1 Krushna Chander Pasalkar</b>           | <b>)</b> |  |
| <b>Aged about 68 years, Occupation</b>      | <b>)</b> |  |
| <b>Agriculture, residing at Joshi Mala,</b> | <b>)</b> |  |
| <b>Post Patas, Taluka Daund, District</b>   | <b>)</b> |  |
| <b>Pune</b>                                 | <b>)</b> |  |

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|---------------------------------------------|----------|--|
| <b>2 Rajendra Krushna Pasalkar</b>          | <b>)</b> |  |
| <b>Aged about 30 years, Occupation</b>      | <b>)</b> |  |
| <b>Agriculture, residing at Joshi Mala,</b> | <b>)</b> |  |
| <b>Post Patas, Taluka Daund, District</b>   | <b>)</b> |  |
| <b>Pune</b>                                 | <b>)</b> |  |

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|-------------------------------------------|----------|--|
| <b>3 Sanjay Krushna Pasalkar</b>          | <b>)</b> |  |
| <b>Aged about 27 years, Occupation</b>    | <b>)</b> |  |
| <b>Service, residing at Joshi Mala,</b>   | <b>)</b> |  |
| <b>Post Patas, Taluka Daund, District</b> | <b>)</b> |  |
| <b>Pune</b>                               | <b>)</b> |  |

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|-------------------------------------------|----------|--|
| <b>4 Sachin Krushna Pasalkar</b>          | <b>)</b> |  |
| <b>Aged about 24 years, Occupation</b>    | <b>)</b> |  |
| <b>Education, residing at Joshi Mala,</b> | <b>)</b> |  |
| <b>Post Patas, Taluka Daund, District</b> | <b>)</b> |  |
| <b>Pune</b>                               | <b>)</b> |  |

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|-------------------------------------------|----------|--|
| <b>5 Sarika Krushna Pasalkar</b>          | <b>)</b> |  |
| <b>Aged about 22 years, Occupation</b>    | <b>)</b> |  |
| <b>Education, residing at Joshi Mala,</b> | <b>)</b> |  |

Post Patas, Taluka Daund, District )  
Pune )

6 Mandabai Krushna Pasalkar )  
Aged about 64 years, Occupation )  
housewife, residing at Joshi Mala, )  
Post Patas, Taluka Daund, District )  
Pune )

7 Narayan Shankar Polekar )  
Adult Occupation agriculturist )  
residing A/P Patas, Taluka Daund, )  
District Pune )

..Respondents

Mr. A. G. Damle Senior Advocate i/b Abhay Nevagi & Associates for the Applicant

Mr. Jayesh Kocheta a/w Ms Anjali Bhujbal for the Respondent Nos.1 to 6  
Ms Sonali Kunekar for the Respondent No.7

CORAM : R. M. SAVANT, J.

DATE : 9<sup>th</sup> SEPTEMBER, 2015

## ORAL JUDGMENT

1 Admit, with the consent of the Learned Counsel for the parties heard forthwith.

2 The Revisionary Jurisdiction of this Court is invoked against the order dated 26-11-2014 passed by the Learned 25<sup>th</sup> Joint Civil Judge Junior Division, JMFC Pune, by which order, the issue No.3 framed whilst trying the application filed under Section 9A came to be answered by holding that the Suit as filed is within limitation and hence the said Court has jurisdiction to try and entertain it.

3           However, prior thereto the Trial Court has adverted to the facts in paragraph 10 and has observed in the said paragraph that in the present Suit, the limitation point is not a purely a question of law and it is a mixed question of law and facts. The Trial Court thereafter in paragraph 11 has observed that in view of the facts mentioned in paragraph 10, the said issue can only be decided after going through the whole trial and while conducting trial the Plaintiff may give explanation in respect of the limitation about the facts mentioned in his evidence as well as the plaint.

4           It is well settled by the Judgment of the Apex Court in the matter of **Foreshore Co-operative Housing Society Ltd. & Ors. Vs. Praveen D. Desai & Ors.**<sup>1</sup> that the issue of limitation concerns the jurisdiction of the Court and therefore can be tried as an issue under Section 9A. Hence notwithstanding the fact that the said issue might entail the adjudication on facts, nevertheless the same would have to be tried as a preliminary issue under Section 9A. The Trial Court has unfortunately not carried out the said exercise on the ground that the said issue is a mixed question of law and facts and would have to be decided at the trial and thereafter has gone on to observe that having regard to the notice issued by the Plaintiffs, the Suit is filed within limitation. How the said observation could have been made by the Trial Court without adjudicating upon the issue that has been framed under Section 9A, therefore begs an answer.

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1 AIR 2015 SC 2006

5           Be that as it may, since the course of action adopted by the Trial Court is contrary to the course of action which the Court is required to follow in respect of an issue framed under Section 9A as evidenced by the Judgment of the Apex Court in Foreshore Co-operative Housing Society Ltd. (Supra) , the impugned order dated 26-11-2014 would have to be quashed and set aside and is accordingly quashed and set aside and the matter would have to be relegated back to the Trial Court for a de novo consideration of the issue framed under Section 9A. The Trial Court would adjudicate upon the said issue and would pronounce its order on all the issues which are framed and find place at internal page 2 of its order. It is clarified that notwithstanding the fact that the said issue is a mixed question of law and facts, the Trial Court nevertheless would have to adjudicate upon the same. On remand the Trial Court to try and decide the said issues latest by 30-11-2015. Needless to state that the said issue would be tried on its own merits and in accordance with law, uninfluenced by the impugned order or the instant order.

6           The Civil Revision Application is allowed to the aforesaid extent and is disposed of as such.

**[R.M.SAVANT, J]**

Certified to be true and correct copy of the original signed Judgment