

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

WRIT PETITION NO.3813 OF 2015

Chimanlal Lakhamshi Shah : Petitioner
versus
M/s. Osaka Synthetics Pvt. Ltd and anr. : Respondents.

Mr. S J Chourasia i/by Ashoka Law Firm for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 21st September 2015

P.C.

1 The order dated 27/01/2015 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai disposing off Notice of Motion No.434 of 2014 filed under Order VII Rule 11 of the Code of Civil Procedure by framing 4 issues which find place in the operative part of the impugned order below paragraph-6 is taken exception to by way of the above Writ Petition.

2 The Application invoking Order VII, Rule 11 of the Code of Civil Procedure was filed by the Petitioner herein i.e. the original Defendant on the ground that the suit in question is barred having regard to Order II Rule 2 of the Code of Civil Procedure, and that the suit is not maintainable on account of the fact that no notice under Section 164 of the Maharashtra Co-operative Societies Act was given.

3 In the written statement it appears that an objection regarding

non-joinder of necessary parties has also been raised. The Trial Court considering the grounds on which the Application under Order VII, Rule 11 of the Code of Civil Procedure was filed deemed it appropriate to frame 4 issues which as indicated above find place in the operative part of the impugned order.

4 It is the submission of the learned counsel for the Petitioner that the Trial Court ought to have proceeded to try the objection raised regarding maintainability of the suit under Order VII Rule 11 of the Code of Civil Procedure and ought not to have framed the issues.

5 In my view, the submission made by the learned counsel for the petitioner is misconceived as the impugned order in terms states that the said issues would be tried as preliminary issues. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. However, the Trial Court would decide the issues framed by it with reasonable despatch.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Order.