

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 425 OF 2011

Ravishankar B. Dube	..	Applicant
VS.		
Parvatidevi Kailash Narayan Pathak & Ors.	..	Respondents

Mr. Ashutosh Kaushik i/b. M/s. Kaushik & Co. for Applicant.
Mr. P. S. Tiwari for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 01 SEPTEMBER 2015

P.C. :-

1] This CRA is directed against order dated 24 March 2011, by which, the City Civil Court has answered the preliminary issue against the applicant and held that it has jurisdiction to entertain the suit.

2] This Court in the case of *Walchandnagar Industries Ltd., Mumbai vs. Indraprastha Developers, Pune & Ors.*¹ has held that a civil revision application should not normally be entertained as against preliminary judgment rejecting the objection regarding jurisdiction of the Court under Section 9A of the CPC. In this regard, reference is required to be made to the observations contained in paragraphs 75, 76 and 77, which reads thus :|

¹ 2015 (3) Mh.L.J. 786

“Preliminary judgment rejecting objection regarding the jurisdiction of Court under Section 9-A of Civil Procedure Code

75. The parameters for exercise of jurisdiction under section 115 of Civil Procedure Code laid down in the aforesaid para in respect of Order VII, Rule 11(d) and Order XIV, Rule 2 of Civil Procedure Code cannot be applied in every situation to the cases where the Court decides the preliminary issues in exercise of its jurisdiction under Section 9-A of Civil Procedure Code, which permits the Court to decide a pure question of law and also a mixed question of law and fact, touching the jurisdiction of the Court. When the Court passes an order in exercise of its jurisdiction under Section 9-A on the principle of demurrer, then in that event the High Court should exercise its jurisdiction under Section 115 of Civil Procedure Code, for the reasons stated in the earlier para. However, when a decision relating to the question of jurisdiction of the Court based upon the conspectus of facts, the Court will have to decide in the facts and circumstances of each case whether such an interference is called for.

76. Under Section 9-A of Civil Procedure Code, the Court is empowered to frame an issue as to the jurisdiction of the Court and to permit the parties to lead evidence in support of it, if it is a mixed question of law and fact. When a decision relating to the jurisdiction of the Court is based upon conspectus of facts, then a question of appreciation or re-appreciation of the evidence on record, may arise. For example, the cases of bar of limitation, bar of res judicata, bar under Order II, Rule 2 of Civil Procedure Code, and the matters of like nature, where the parties lead oral and documentary evidence, and on conspectus of facts, the decision is arrived at by the Trial Court either that the suit is barred by law of limitation, or by a principle of res judicata or by a principle under Order II, Rule 2 of Civil Procedure Code. No doubt, these issues pertain to the jurisdiction of the Court in respect of which the power under Section 115 can be exercised.

77. The question is, should this Court in aforesaid situation exercise its jurisdiction under Section 115 of Civil Procedure Code. The High Court may not exercise its jurisdiction in such situation. The reasons would be – (i) the trial Court does not act beyond the jurisdiction, neither it fails to exercise the jurisdiction vested in it; (ii) the trial Court is bound to decide the right, may decide wrong, and merely because it has decided wrongly, it does not amount to doing something which it had no jurisdiction to do; (iii) it is not the function of the High Court under section 115 to appreciate or re-appreciate the evidence on record and to come to a conclusion different than the one arrived at by the Court below; (iv) the High Court cannot act as a Court of Appeal and substitute the view on facts taken by the trial Court; (v) section 115 does not confer a jurisdiction upon the High Court to correct the errors of fact, howsoever gross they may be, or even the errors of law, not touching the jurisdiction of the Court; (vi) the exercise of jurisdiction by the High Court shall deprive a statutory right of appeal available to the party to challenge the findings of fact recorded by the Court below to answer a preliminary issue either in the negative, (vii) the error, if any, can be corrected in more convenient and effective manner in wider jurisdiction of appeal; (viii) it is possible that if the suit is dismissed on merits, the decision on preliminary issue may lose its significance; and (ix) if any appeal is preferred against dismissal of suit, then in terms of sub-section (1) of section 105 read with Order XLIII, Rule 1-A or under Order XLI, Rules 22 and 33 of CPC, it can be urged in such appeal by the defendant that the Trial Court could not have passed such an order and the Appellate Court is bound to decide the same on its own merits.”

3] In view of the aforesaid legal position, it is not necessary to entertain the present CRA. However, it is made clear that in case, the suit is decided against the applicant and if the applicant chooses to institute a substantive appeal against such decision, then the applicant, in terms of Section 105 of the CPC read with

Order XLIII Rule 1A or order XLI Rules 22 and 23 of CPC, will be at liberty to urge that the impugned order was incorrectly made. If, such a plea is taken by the applicant, then the same will be decided in accordance with law and on its own merits at that stage.

4] It is clarified that this Court has not gone into the merits of the matter and therefore all contentions of all parties are left open.

5] With liberty as aforesaid, this CRA is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka

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."

Uploaded by :
Ms. S. K. Chandka
P.S. to the Hon'ble Judge

Uploaded on: 02 September 2015