

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.325 OF 2015

Sharad Ashok Avhad ... Petitioner
Vs.
Ram Kashinath Shirsat and others ... Respondents

Mr. Sachin Gite for Petitioner.
Ms Seema Sarnaik for Respondents No.1 to 6.

CORAM : R. G. KETKAR, J.
DATE : 26TH JUNE, 2015

P.C. :

Heard Mr. Gite, learned Counsel for petitioner and Ms Sarnaik, learned Counsel for respondents No.1 to 6 at length.

2. By this Petition under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant No.2 has challenged the judgment and order dated 02.02.2015 below exhibit-47 as also judgment and order dated 10.03.2015 below exhibit-21 in Special Civil Suit No.254 of 2014 passed by the learned 3rd Joint Civil Judge, Senior Division, Nashik. By order dated 02.02.2015, the learned trial Judge rejected the application at exhibit-47 filed by the petitioner, hereinafter referred to as the defendant No.2, for framing preliminary issue of jurisdiction in view of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'Act'). By order dated 10.03.2015, the learned trial Judge rejected the application at exhibit-21.

3. Mr. Gite submitted that petitioner took out application at exhibit-21 for framing preliminary issue on two grounds namely, Suit is barred by limitation as also on the question of jurisdiction of the Civil Court

under the provisions of the Act. By order dated 03.01.2015, the learned trial Judge framed preliminary issue only as in respect of limitation. The learned trial Judge did not framed issue as to whether Civil Court has jurisdiction to entertain and try the Suit in view of the provisions of the Act. Petitioner, therefore, took out application at exhibit-47 for framing issue of jurisdiction and that application was rejected by the impugned order dated 02.02.2015.

4. On the other hand, Ms Sarnaik submitted that basically the application at exhibit-21 itself is misconceived as the same was filed under Section 9-A C.P.C. She submitted that application for interim relief was decided by the trial Court on 19.09.2014. The application at exhibit-21 was filed on 13.10.2014. In view thereof, application at exhibit-21 was wholly misconceived.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, it is not in dispute that application for interim relief was decided on 19.09.2014. It is also not in dispute and rather is evident from record that on 13.10.2014, petitioner took out application under Section 9-A C.P.C. Section 9-A C.P.C. reads as under,

“9A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken such issue to be decided by the court as a preliminary issue:-

(1) Notwithstanding anything contained in this code or any other law for the time being in force, if at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, on objection to jurisdiction of the court to entertain such suit is taken by any of the parties to the suit the court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting for setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application the court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction”.

6. In view thereof, in my opinion, the application filed under Section 9-A was wholly misconceived and could not have been entertained by the learned trial Judge. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order albeit on different reasons. Hence, Petition fails and the same is dismissed. Liberty is reserved to the petitioner to take out appropriate application under Order VII, Rule 11 C.P.C. It is made clear that by reserving liberty, I have not expressed any opinion on the proposed proceedings. All contentions of the parties in that regard are expressly kept open.

(R. G. KETKAR, J.)

Minal Parab