

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

CIVIL REVISION APPLICATION NO.588 OF 2015

Jayprakash Mahadeo Kadam : Applicant.
Versus
Shivaji Pandurang Solase and ors. : Respondents.

Mr. P G Chavan for the Applicant.

CORAM : R. M. SAVANT, J.
DATE : 12th October 2015

P.C.

1 The above Civil Revision Application has been filed against the order dated 08/04/2015 passed by the learned 4th Civil Judge, Junior Division, Pandharpur by which order the Application (Exhibit 28) for framing a preliminary issue and to dismiss the suit under Order VII Rule 11 of the Code of Civil Procedure came to be rejected.

2 The suit in question has been filed by the Respondent Nos.1 to 3 herein claiming damages against the Applicant on the basis of their acquittal in S.T.C. No.923 of 2008 which was registered at the behest of the Applicant. The matter is in respect of the theft of electricity. The Respondent Nos.1 to 3 – the original Plaintiffs have claimed damages to the tune of Rs.3,00,000/- against the Applicant – original Defendant. The said S.T.C. No.923 of 2008 resulted in the acquittal of the Respondent Nos.1 to 3. An Appeal against the acquittal came to be filed in this Court by the Applicant. The same came to be disposed

of by a learned Single Judge of this Court with liberty granted to file an Appeal under Section 372 of the Code of Criminal Procedure before the Sessions Court. Accordingly Criminal Appeal No.50 of 2014 has been filed in the Sessions Court at Pandharpur, District Solapur and is as yet pending. The instant Application (Exhibit 28) was therefore founded on the acquittal of the Respondent Nos.1 to 3. The said Application for dismissal of the suit is founded on the fact that there is no cause of action for filing the suit and that the necessary parties have not been arrayed to the suit.

3 The Trial Court considered the said application and has rejected the same on the ground that the Plaintiffs have averred the cause of action in the plaint and therefore the Trial Court was of the view that the case of the Defendant that the plaint does not disclose the cause of action could not be accepted. The Trial Court also observed that it could not be said that the suit was barred by any law in so far as framing of preliminary issue under Section 9A of the Code of Civil Procedure is concerned. The Trial Court rejected the application on the ground that since there is no application for interim relief and since the suit is at the stage where the Plaintiffs witness is to be cross examined, the said provision could not be invoked. The Trial Court also held that it had the jurisdiction to try and entertain the suit for damages and malicious prosecution.

4 The principal contention of the learned counsel for the Petitioner Shri Chavan was that there is no cause for action for filing the suit and at least the suit could not be proceeded with pending the Appeal in the Sessions Court.

5 In my view, the order of the Trial Court rejecting the contention of the Defendant that there is no cause of action for filing the suit does not merit any interference at the hands of this Court in the writ jurisdiction. However, since the Applicant – Defendant had filed application seeking dismissal of the suit on the ground of the Appeal being filed against the acquittal and not for stay of the suit pending the Appeal and since the application has been dealt with by the Trial Court on the said basis, in my view, it would be open for the Defendant to file an application for stay of the suit, pending the Appeal before the Sessions Court. If any such application is filed, the same would be decided on its own merits and in accordance with law. Hence without interfering with the impugned order, however, with the observations as aforesaid, the above Civil Revision Application is dismissed.

[R.M.SAVANT, J]