

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

WRIT PETITION NO.7151 OF 2015

Sanjay M Kochrekar and anr. : Petitioners
versus
Sena Co-op. Housing Society Ltd.
Through its Chairman
Mr. Supresmal Surana and ors. : Respondents.

Mr. Mahendra Shingade for the petitioner.
Mr R S Tanna for the Respondent No.1.

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

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 23/02/2015 passed by the learned 3rd Joint Civil Judge, Senior Division, Thane by which order the application (Exhibit 47) filed by the Defendant Nos.3 and 4 for the issue of limitation to be tried as preliminary issue came to be rejected.

2 It is required to be noted that the Defendant Nos.3 and 4 were impleaded in the suit some time in the year 2013 by the order dated 20/08/2013. It is prior thereto that the application for temporary injunction filed by the Plaintiffs was decided by the Trial Court on 09/08/2012. It is after their impleadment that the Defendant Nos.3 and 4 filed the instant application for trying the issue of limitation as a preliminary issue. It seems that after

filing of the application, the issues were framed on 09/02/2015 amongst which is the issue of limitation.

3 The Trial Court has rejected the application on the ground that the said issue cannot be tried as preliminary issue as the stage at which the suit is at present has transcended the 9A stage as also the issue cannot be tried under Order XIV Rule 2 of the Code of Civil Procedure. The Trial Court was of the view that the application is filed merely to delay the adjudication of the suit and has therefore whilst rejecting the same imposed the costs of Rs.5,000/- on the Defendant Nos. 3 and 4.

4 In my view having regard to the reasons mentioned in the impugned order as also having regard to the stage at which the suit is at present, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]