

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1344 OF 2015
IN
APPEAL FROM ORDER NO.1173 OF 2012**

Shri Balaji Realty and Ors.

.. Applicants

Versus

Vishal Nandlal Gupta and Ors.

..Respondents

.....

Mr. Jaydeep Deo for the Applicants.

Mr. A. P. Kulkarni for the Respondents.

CORAM: MRS. MRIDULA BHATKAR, J.

DATED: 6th OCTOBER, 2015.

P. C. :

. This application is made in a disposed of Appeal from Order No.1173/2012. The said Appeal from Order was disposed of on 27/6/2013 with a direction to the Trial Court that it shall frame and decide the preliminary issue as to whether the suit is barred by the provisions of Benami Transactions (Prohibition) Act under section 9-A of the Code of Civil Procedure (CPC) and thereafter pass an order on Exhibit 5 application. At that time this Court has directed interim injunction till then.

2. The appellants in the said Appeal from Order have filed Civil Application pointing out that though the order was passed on

27/6/2013 and the Appeal was disposed of, till today no issue under section 9-A of the CPC is decided. It is further pointed out that the applicants have moved an application for early hearing before the learned Trial Judge on 23/2/2015. Thereafter the matter appeared for 6-7 times, however time was granted to the respondents to file say on that application and no order is passed on the application. As the injunction granted is running against the applicants for last 2-3 years, the issue be heard expeditiously by the Trial Court.

3. Learned Counsel for the appellants in support of his submissions on maintainability of this application has relied on a judgment of this Court in *B. C. Shah & Co. vs. T. P. Kanani, 1974 SCC Online Bom 120* (Civil Revision Application No.318 of 1974 decided on 29/8/1974).

4. Learned Counsel for the respondents submitted that this Civil Application is not maintainable on the ground that this Court has already disposed of the Appeal from Order.

5. It is true that the Appeal from Order was decided and disposed of on 27/6/2013. The applicants are seeking order in

furtherance and in pursuance of the order dated 27/6/2013 passed by this Court. There is undoubtedly delay in deciding the issue under section 9A of the CPC by the Trial Court. Thus, the Trial Court is directed to pass an order on the application of preliminary issue, so also expedite the matter within 6 months. Accordingly, Civil Application stands disposed of.

(MRS. MRIDULA BHATKAR, J.)