

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11094 OF 2014

Life Insurance Corporation of India	..	Petitioner
VS.		
Malar Financial Services Pvt. Ltd.	..	Respondent

Mr. Shrinivas Bhave with Ms Komal Shah for Petitioner.
Mr. V. Aiyar i/b. K. V. Aiyer & Asso. for Respondent.

CORAM : M. S. SONAK, J.
DATE : 16 JULY 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges orders dated 7 April 2014 and 31 July 2014 made by the trial Court as well as revisional Court purporting to answer the preliminary issue as to jurisdiction against the petitioner.

3] Admittedly, in the present case no issue as such, under section 9A of the CPC was at all framed. The trial Court, relying upon the decision of the Apex Court in the case of *Banatwala & Company vs. L.I.C. of India & Anr.*¹ proceeded to directly reject the application of the petitioner for framing of preliminary issue.

¹ JT. 2011 (11) SC 89

4] The learned counsel for the petitioner points out that there is reconsideration of the legal position, in the light of the subsequent decision of the Apex Court in the case of *Suhas H. Pokhale vs. Oriental Insurance Company Limited and its Estate Officer*². Further, the said decision in the case of *Suhas Pokhale* (supra) is pending consideration before the Three Judge Bench, in view of order made in the case of *Life Insurance Corporation of India vs. VITA Pvt. Ltd. & Anr.*³ In the light of such material, the learned counsel for the petitioner submitted that the two Courts fell into error in rejecting the preliminary objection at the threshold.

5] In my judgment, the interests of justice would be met if the two orders are set aside. However, there is no necessity to frame any preliminary issue in this matter. The issue of jurisdiction, as raised by the petitioner can always be taken up and considered along with the remaining issues which are in the RAN Application No. 12 of 2013 for the purposes of fixing of standard rent.

6] Accordingly, without expressing any opinion upon the merits of the objection raised by the petitioner, the impugned orders are set aside and the trial Court is directed to proceed to decide the

2 2014 (4) SCC 657

3 Order dated 17.03.2015 in Petition for Special Leave to Appeal (C) No. 35859 of 2014

RAN Application No. 12 of 2013 on its own merits and in accordance with law. In so deciding the said application, the trial Court, along with all other issues that arises in the application, shall also consider objection as to jurisdiction raised by the petitioner herein. Rule is accordingly made absolute to the aforesaid extent only. There shall be no order as to costs.

7] All concerned to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka