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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1171 OF 2015
IN
NOTICE OF MOTION NO.1556 OF 2015
IN
S.C. SUIT NO.1235 OF 2015

WITH
CIVIL APPLICATION NO.1473 OF 2015
IN
APPEAL FROM ORDER NO.1171 OF 2015
IN
NOTICE OF MOTION NO.1556 OF 2015
IN
S.C. SUIT NO.1235 OF 2015

Ms.Gayeti Singh	...Appellant
V/s.	
S.J. Health Pvt.Ltd. & Ors.	...Respondents

Mr.Chirag Balsara with Mr.Rajesh Talekar for the Appellant.
Mr.D.A. Sakhalkar i/b Lex Vidhan for the Respondent No.1.
Mr.Ameya Gokhale with Mr.Umang Singh for the Respondent No.8.

CORAM : R.D. DHANUKA, J.
DATE : 8TH DECEMBER, 2015.

P.C. :-

1. By this appeal from order filed by the appellant (original defendant no.1) the appellant has impugned the order passed by the learned trial Judge dated 21st August, 2015 allowing the notice of motion filed by the original plaintiff thereby granting injunction against the appellant and others. Mr.Balsara, learned counsel for the

appellant states that though the issue of territorial jurisdiction was raised under section 9-A of the Code of Civil Procedure, 1908 in the affidavit in reply filed before the learned trial Judge, without deciding the said issue first, the learned trial Judge has disposed of the notice of motion and has granted an injunction in terms of prayer clauses (a) and (b) of the notice of motion which is contrary to the judgment of the Supreme Court. He states that till the issue under section 9-A of the Code of Civil Procedure raised by the appellant is decided by the learned trial Judge, his client will not publish any further articles. The statement is accepted.

2. Learned counsel appearing for the respondent no.1 (original plaintiff) states that since the learned trial Judge has not decided the issue of jurisdiction raised under section 9-A of the Code of Civil Procedure, he has no objection if the impugned order dated 21st August, 2015 passed by the learned trial Judge is set aside and the issue of jurisdiction under section 9-A of the Code of Civil Procedure is decided expeditiously.

3. In my view since the appellant herein had raised an issue of jurisdiction under section 9-A of the Code of Civil Procedure in the affidavit in reply to the notice of motion and the same is not decided by the learned trial Judge before disposal of the notice of motion, the impugned order dated 21st August, 2015 deserves to be set aside on

that ground and the impugned order dated 21st August, 2015 is accordingly set aside. It is made clear that this Court has not expressed any views on the merits of the matter. The learned trial Judge shall decide the issue of jurisdiction raised by the appellant under section 9-A of the Code of Civil Procedure within a period of three months from today.

4. Insofar as the request of learned counsel for the respondent no.1 that the injunction shall be granted in respect of other defendants excluding defendant no.8 is concerned, in my view since the entire order passed in the notice of motion is without deciding the preliminary objection raised under section 9-A of the Code of Civil Procedure, I am not inclined to accept this submission made by learned counsel for the respondent no.1.

5. The appeal from order is accordingly disposed of in aforesaid terms. It is made clear that the learned trial Judge shall decide the matter afresh without being influenced by the observations made by the learned trial Judge in the impugned order and shall decide the same on its own merits.

6. In view of disposal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)