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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 1093 OF 2014

Nahur Vivekanand Co-Operative Housing
Society Limited and anr. ... Petitioners

Vs.

Ashwini C.Thakker and others ... Respondents

Ms.Mallika Taly a/w Mr.Damid Abraham i/b S.Mahomedbhai & Co.,
Advocate for Petitioners.

Mr.Nitesh Acharya, Advocate for Respondents No.1 & 2.

Mr.A.K.Nandanwar, Advocate for Respondent No.5 – B.M.C.

CORAM : R. G. KETKAR, J.

DATE : 11th JUNE, 2015

P.C. :

1. Heard Ms.Mallika Taly, learned Counsel for the petitioners, Mr.Nitesh Acharya, learned Counsel for the respondents No.1 & 2 and Mr.A.K.Nandanwar, learned Counsel for respondent No. 5 at length.

2. By this petition under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No. 3 & 4 have challenged the order dated 21/02/2014 passed by the learned Judge of the Bombay City Civil Court in Notice of Motion No. 1307 of 2012 in L.C.Suit No. 568 of 2012. By that order, the learned trial Judge framed the preliminary issues.

3. In support of this petition, Ms.Taly strenuously contended that the learned trial Judge was not justified in framing the preliminary issues and ought to have decided the maintainability

of the suit on the ground that it is barred by provisions of (i) Section 177 of the Maharashtra Housing and Area Development Act, 1976 (ii) Sections 147 & 149 of the Maharashtra Regional and Town Planning Act, 1966 and (iii) Section 163 of the Maharashtra Co-Operative Societies Act 1960. By the impugned order, the learned trial Judge has framed issues under Order 14 of the C.P.C.

4. On the other hand, Mr.Acharya submitted that for deciding the motion, the learned trial Judge has framed preliminary issues and the same issues are yet to be decided. He further submitted that considering the motion under Order 7 Rules 11 (a) & (d), the learned trial Judge was justified in framing preliminary issues.

5. In my opinion, petition is wholly misconceived. The learned trial Judge, after considering the prayers made in the motion has rightly framed the preliminary issues for consideration. Having regard to the fact that the learned trial Judge has framed the preliminary issues, it cannot be said that the said issues are framed under Order 14 of C.P.C. In view thereof, no case is made out for invocation of powers under Section 115 of C.P.C. Hence, petition fails and the same is dismissed. It is made clear that I have not expressed any opinion on merits of the controversy raised in the motion. Order accordingly.

(R. G. KETKAR, J.)