

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 34 OF 2014**

Union of India & Ors.

..Applicants

Vs.

N.K.Bhog & Ors.

..Respondents

Mr. Y. H. Muchala, Senior Advocate with Ms Rashda Ainapure and Mr. Sharique Nachan i/b Mr. Parag Vyas for the Applicants

Mr. V. V. Pai for the Respondent Nos.1 and 2

Mr. Aditya Shiralkar i/b Mr. Siddharth Samantray, Shiralkar & Co. for the Respondent Nos.3 and 4

**CORAM : R. M. SAVANT, J.
DATE : 29th JANUARY, 2015**

P.C.

1 Admit, considering the nature of the challenge raised heard forthwith.

2 The Revisionary Jurisdiction of this Court is invoked against the order dated 26-7-2013 passed by the Learned 5th Joint Civil Judge Senior Division, Pune, by which order, the issue of jurisdiction has been decided by the Trial Court and the Trial Court has ruled that the Civil Court has jurisdiction to entertain and decide the present Suit and that the plaint is not

liable to be rejected for want of cause of action.

3 It is not necessary for this Court to burden this order with unnecessary details having regard to the nature of the order that is required to be passed in the instant Civil Revision Application. Suffice it to state that the Suit in question being Regular Civil Suit No.99 of 2013 has been filed by the Respondent Nos.1 and 2 herein challenging two Memorandums of Understanding (MOUs), first of which is dated 14-8-1997 and the second of which is dated 5-8-2000. The said MOUs were entered into between the Respondent Nos.3 and 4 and the present Petitioners. In the suit they are the original Defendant Nos.1 and 2 and the Defendant Nos.3 to 5 respectively. The said MOUs are questioned on the ground that prior to entering into the said MOUs, the Defendant Nos.1 and 2 had not taken the approval of the General Body of the Defendant No.1. An application for injunction/interim reliefs came to be filed by the Plaintiffs to which it seems a reply came to be filed on behalf of the Defendant Nos.3 to 5 i.e. the Applicants herein.

4 The Applicants thereafter filed three applications being Exhibit 43, Exhibit 45 and Exhibit 56. In so far as Exhibit 43 is concerned, the same was filed invoking Section 9A of the Civil Procedure Code and the issue of limitation was sought to be raised on the basis that the MOUs were sought to be challenged after 15 years. By the said application, the Defendant Nos.3 to 5

sought framing of the preliminary issues relating to the jurisdiction.

In so far as Exhibit 45 is concerned, the same was filed invoking Order VII Rule 11 of the Civil Procedure Code and was founded on the fact that the Plaintiffs did not have a cause of action for filing the Suit.

In so far as Exhibit 56 is concerned, the objection to the maintainability of the Suit was sought to be raised on the touchstone of the provisions of the Companies Act, 1956. In the said application, it is stated that the said application be read as part and parcel of the application filed under Section 9A of the Civil Procedure Code on 22-10-2013.

Hence a reading of the said applications Exhibit 43, Exhibit 45 and Exhibit 56 discloses that the Defendant Nos.3 to 5 had invoked Section 9A and raised preliminary issue as regards the maintainability of the Suit on the ground of limitation and on the touchstone of the provisions of the Indian Companies Act. In so far as the application Exhibit 45 filed under Order VII Rule 11 is concerned, the same founded on the fact that there was no cause of action for filing the Suit in question.

5 The Trial Court having regard to the issue of jurisdiction being raised by the Defendant Nos.3 to 5 framed the following two issues:

- (i) whether this Court has jurisdiction to entertain and decide the present Suit

(ii) whether the plaint is liable to be rejected for want of cause of action.

In so far as the issue No.(i) is concerned, it answered the said issue in the affirmative and in so far as the issue No.(ii) is concerned, it answered the same in the negative. The Trial Court has ruled that it has the jurisdiction to try and entertain the Suit and has whilst so ruling, considered the provisions of the Companies Act and the contentions which were raised on the touchstone of the said provisions as regards the maintainability of the Suit. However, what is required to be noted that though the issue of limitation was raised by the Defendant Nos.3 to 5 vide the said application Exhibit 43, the Trial Court has in the impugned order though adverted to the said issue had held that since the issue of limitation is a mixed question of law and fact, it cannot be determined at the preliminary stage, meaning thereby the Trial Court has postponed the adjudication of the issue of limitation to a later point in the Suit, may be along with the other issues in the Suit.

In so far as the issue of limitation is concerned, it is trite that the said issue relates to the jurisdiction of the Court to entertain the Suit.

6 A useful reference could be made to the judgment of a Division Bench of this Court in the matter of **Mukund Ltd. vs. Mumbai International Airport & Ors.**¹ attention to which was drawn by the Learned Senior Counsel

1 2011(5) Bom.C.R. 456

Mr. Muchala appearing for the Applicants. The Division Bench after referring to an earlier Division Bench judgment of this Court held that the plea of limitation is a plea which goes to the jurisdiction of the Court and it is a plea on law and that it is settled position in law that when a suit is barred by limitation, the Court is precluded from proceeding on the merits of the contentions and in fact is obliged to dismiss the suit. The Division Bench held that once a issue of jurisdiction is raised at the hearing of an application for the grant of interim reliefs or for setting aside the order granting interim reliefs, the Court is under an obligation to decide that issue as a preliminary issue before deciding the question of interim relief. A useful reference could also be made to the Judgment of another Division Bench of this Court in the matter of **Meher Singh Vs. Deepak Sawhny**² The Division Bench after referring to the rationale of introducing Section 9A of the Civil Procedure Code and the object behind the said provision held that once an issue is framed as a preliminary issue it has to be determined after a proper adjudication. An adjudication would postulate furnishing parties an opportunity to lead evidence if required and that a decision of the Court on the issue of jurisdiction governs maintainability of the Suit.

7 Having regard to the proposition of law laid down governing Section 9A of the Civil Procedure Code, the observations of the Trial Court in paragraph 21 runs counter to the said proposition laid down by the Division

² 1998(3) Mh.L.J.940

Benches of this Court. It was therefore incumbent on the part of the Trial Court to frame the issue of limitation and thereafter by giving the parties a proper opportunity by way of leading evidence if they so deserve, ought to have adjudicated the said issue. This would have given a quietus to the issue of limitation that has been raised on behalf of the Defendant Nos.3 to 5. However, the Trial Court without following the said procedure and by merely observing that it is a mixed issue of law and fact has not adjudicated upon the same. Hence the applications Exhibit 43, Exhibit 45 and Exhibit 56 are concerned, in so far as they relate to the issue of limitation, would have to be relegated back to the Trial Court for adjudication of the said issue of limitation. The Trial Court is required to frame the issue of limitation which would be to the following effect : “Whether the Suit is barred by limitation.” This would be in the context of the fact that the challenge is to the MOUs dated 14-8-1997 and 5-8-2000, the Trial Court to give proper opportunity to the parties to make their respective assertions in so far as the said issue is concerned, and thereafter adjudicate the said issue.

8 In so far as the challenge to the impugned order is concerned, as indicated above, the Trial Court has adjudicated upon the said issue of jurisdiction restricted to the objection raised on the touchstone of the provisions of the Companies Act and the mechanism that is provided thereunder. The challenge of the Defendant Nos.3 to 5 to the impugned order

would be kept reserved so as to enable the Defendant Nos.3 to 5 to challenge the impugned order contingent upon the decision that would be rendered on the issue of limitation. This is clarified by stating that if the issue of limitation is decided in favour of the Defendant Nos.3 to 5 and the Trial Court holds that the Suit is barred by limitation, then there would be possibly no warrant for them to challenge the impugned order. In the event, the issue of limitation is decided against the Defendant Nos.3 to 5 by holding that the Suit is not barred by limitation, then it would be open for the Defendant Nos.3 to 5 to raise a composite challenge that is to the order impugned in the present Civil Revision Application and the order that would be passed on the issue of limitation by the Trial Court.

9 The Learned Counsel for the Respondent Nos.1 and 2 on instructions states that the Suit is to come up before the Trial Court on 7-2-2015. On the said date, the parties may appraise the Trial Court of the instant order. The Trial Court may thereafter fix the schedule for deciding the issue of limitation and decide the same latest by 30-6-2015, by giving proper opportunity to the parties.

10 In so far as the issue of limitation is concerned, needless to state that the contentions of the parties are explicitly kept open for being urged before the Trial Court. Additional pleadings if any on behalf of the Defendant

Nos.3 to 5 to be filed within four weeks from date and the additional pleadings if any on behalf of the Plaintiffs to be filed within two weeks thereafter. The contentions of all the parties in so far as the impugned order is concerned are also kept open for being urged at the appropriate time. The Civil Revision Application is accordingly allowed to the aforesaid extent and to stand disposed of in terms of the above.

11 In view of the disposal of the above Civil Revision Application, the Civil Application No.192 of 2014 does not survive and to accordingly stand disposed of as such.

12 The parties to act upon an ordinary copy of this order duly authenticated by the Shirestedar of this Court.

[R.M.SAVANT, J]