

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 255 OF 2011

Mortaza Akbar Dashti .. Applicant
vs.
Fatima Mohammed Taqhi and ors. .. Respondents

Mr. C.V. Lad for the Applicant.
Mr. M.S. Lagu for Respondent No.1.
Mr. S.A. Ghaisas for Respondent Nos.2 to 6.

CORAM : M. S. SONAK, J.
DATE : 28 April, 2015.

P.C. :-

- 1] Heard learned counsel for the parties.
- 2] This Civil Revision Application challenges the order dated 9 August 2010 made by the learned 2nd Joint Civil Judge, Senior Division Pune dismissing the applicant's application under Order 7 Rule 11 of the CPC seeking rejection of the plaint, on the ground that the suit as filed, was barred by limitation.
- 3] The learned Civil Judge, in the impugned order, has held that the issue of limitation in the present case was a mixed question of law and fact and therefore, it was not appropriate to reject the plaint in exercise of powers conferred by the Order 7 Rule 11 of the CPC. Considering the circumstances that the issue of limitation in the present case, is indeed a mixed question of law and fact, it cannot be said that there is any error or jurisdiction in so far as making of the impugned order is concerned. Nevertheless, it transpires that in the

suit as instituted, the plaintiff has applied for interim reliefs. In fact, there is a separate application taken out seeking interim reliefs. In such circumstances, the petitioner, shall be entitled to urge the issue of limitation be framed as a preliminary issue under Section 9A of the CPC as applicable to the State of Maharashtra.

4] Very recently, the Hon'ble Supreme Court, in case of *Foreshore Cooperative Housing Society Limited Vs. Praveen D. Desai (Dead) through Lrs. and ors* – 2015 SCC Online SC 302, has held that the issue of limitation is an issue which goes to the root of jurisdiction and accordingly, when such issue arises, the same is required to be framed as a preliminary issue under Section 9A of the CPC and try accordingly. Therefore, although the impugned order is not being interfered with, liberty is granted to the petitioner to take out an appropriate application before the learned Civil Judge, urging that the issue of limitation be framed as a preliminary issue and be decided as such.

5] It is made clear that this Court has not examined the merits of the matter and therefore, all contentions of all parties on the issue as to whether or not the suit is indeed barred by limitation are kept open.

6] However, considering that the suit is of the year 2009, the learned Civil Judge is required to dispose of the preliminary issue of limitation within a period of six months from today. If ultimately, the Civil Court holds that the suit has been filed within prescribed period of limitation, then the Civil Court shall make an endeavour to

dispose of the main suit itself within a period of one year thereafter.

7] With the aforesaid observations, this Civil Revision Application is disposed of. There shall be no order as to costs.

8] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

dinesh