

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 1160 OF 2014**

Manish Satish Beri & Anr.

..Applicants

Vs.

Sahil Promod Parekh & Ors.

..Respondents

Mr. Ashok Tajane for the Applicants

CORAM : R. M. SAVANT, J.

DATE : 22nd JANUARY, 2015

P.C.

1 The Revisionary jurisdiction of this Court is invoked against the order dated 16-9-2014 passed by the Learned 2nd Joint Civil Judge Senior Division, Pune, by which order, the application Exhibit 66 invoking Section 9A of the Civil Procedure Code, came to be rejected.

2 The jurisdiction under Section 9A was invoked for framing of a preliminary issue as to the jurisdiction of the Civil Court to try the Suit in question in view of clause (19) of the Partnership Deed dated 27-2-2007. The said clause according to the Defendant Nos.1 and 2 is an arbitration clause and in view of the fact that arbitration is provided, the Suit in question be dismissed. The Plaintiff filed his reply to the said application Exhibit 66 and objected to the said application on the ground that the Defendant Nos.1 and 2 have filed their Written Statement. Thereafter issues have been framed on 20-1-2014 and therefore the Defendant Nos.1 and 2 having submitted to the

jurisdiction of the Civil Court, were not entitled to invoke the arbitration clause.

3 The Trial Court considered the said application and has by the impugned order rejected the same. The rejection is inter alia on the ground that the Defendant Nos.1 and 2 had applied for leave to defend which came to be granted pursuant to which they had filed their Written Statement. Significantly in the Written Statement no reference was made to the arbitration clause. Thereafter issues were also framed on 20-1-2014 hence the Trial Court held that the Defendants had submitted to the jurisdiction of the Court.

4 In my view, having regard to Section 8 of the Arbitration and Conciliation Act and the principles applicable for consideration of an application which has been filed under the said provision, for referring the parties to arbitration, as also in the light of the facts which have been adverted herein above, no fault can be found with the Trial Court for rejecting the application by the impugned order. Hence there is no error of jurisdiction committed by the Trial Court for this Court to exercise its Revisionary Jurisdiction, the Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]