

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODGING) NO.668 OF 2014
IN
NOTICE OF MOTION (LODGING) NO.2032 OF 2013
IN
SUIT NO.507 OF 2014

Jaiprakash Satyanath Dubey		Appellant
V/s.		
Usha Sarvanarayan Mishra & Ors.		Respondents

Mr. Bhavesh Parmar, i/by Mr. Devmani Shukla
and Mr. V. Yadav, for the Appellant.

Ms. J.A. Sarkhot for the Respondents.

CORAM : V.M. KANADE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 7TH SEPTEMBER, 2015.

P.C. :

1. Heard learned counsel for the parties.

2. The Appellant is aggrieved by the order dated 9th October, 2014, which was passed in Notice of Motion (Lodging) No.2032 of 2013. The learned counsel appearing on behalf of the Appellant has submitted that the learned Single Judge has wrongly held that the claim of the Plaintiff is not disputed. He has invited our attention to the affidavit-in-reply to the Notice of Motion and has pointed out that the said claim of the Plaintiff is

specifically denied and disputed. Secondly, it is submitted that the Appellant has raised a preliminary issue regarding maintainability of the Suit in this Court, under Section 9A of the CPC. It is submitted that despite the Appellant raising this issue, learned Single Judge has not considered the preliminary issue and has disposed of the Notice of Motion. It is submitted that the impugned order, therefore, needs to be set aside since it is contrary to the law laid down by this Court.

3. The learned counsel for the Appellant has invited our attention to the Judgment of the Division Bench of this Court in the case of ***Mukund Ltd. Vs. Mumbai International Airport & Ors., 2011 (2) Mh.L.J. 936***. He has filed an additional affidavit stating therein that this point was raised before the learned Single Judge.

4. In our view, the learned Single Judge has clearly erred in coming to the conclusion that the claim of the Plaintiff is not disputed. The entire impugned order, therefore, required to be set aside since it proceeds on the wrong assumption that the claim of the Plaintiff is not disputed. The impugned order dated 9th October, 2014, which was passed in Notice of Motion (Lodging) No.2032 of 2013, is, therefore, quashed and set aside. The matter is remanded back to the learned Single Judge, who shall decide the Notice of Motion (Lodging) No.2032 of 2013 in accordance with law.

5. Hearing of Notice of Motion (Lodging) No.2032 of 2013 is expedited.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[V.M. KANADE, J.]

CERTIFICATE

**Certified to be true and correct copy of the
original signed Order.**