

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.19 OF 2016

Mahant Kaushlendra Dassji ... Applicant
Vs.
Swami Hathiramji Mutt Tirupati and another ... Respondents

Mr. S. U. Kamdar, Senior Advocate a/w. Mr. Akhilesh Dubey i/b. Law
Counsellors for Applicant.
Mr. A. A. Kumbhakoni, Senior Advocate i/b. Mr. Nitin P. Dalvi for
Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 22, 2016

P.C. :

Heard Mr. Kamdar, learned Senior Counsel for applicant and
Mr. Kumbhakoni, learned Senior Counsel for respondent No.1 at length.

2. By this Application under Section 115 of the Code of Civil
Procedure, 1908 (for short 'C.P.C.'), applicant has challenged the
judgment and order dated 23.11.2015 passed by the learned Judge
presiding over Court Room No.13 of Bombay City Civil Court at
Bombay on preliminary issue in Suit No.7686 of 2000 (High Court Suit
No.73 of 2000). By that order, the learned trial Judge decided the
preliminary issue framed under Section 9-A of C.P.C. and held that Civil
Court has jurisdiction to entertain and try the Suit and the Suit is not
barred by limitation.

3. After arguing the Application for quite some time, Mr. Kamdar
seeks permission to withdraw the Application framed under Section 9-A
of C.P.C. He however submits that the learned trial Judge may be
directed to frame issue as to whether the Suit instituted by the
respondents-plaintiffs is barred by limitation and the said issue may be

tried along with other issues while deciding the Suit. He further submits that liberty may be reserved to the applicant to file application before the trial Court for framing issue as regards the issue of territorial jurisdiction. Mr. Kumbhakoni has no objection for adopting this course.

4. In view thereof, by consent of the parties, Application is disposed of as withdrawn in the following terms:

- a. Application filed by the applicant under Section 9-A of C.P.C. is allowed to be withdrawn. In view thereof, the impugned order dated 23.11.2015 stands dissolved;
- b. The learned trial Judge shall frame issue as to whether the Suit is barred by limitation and shall try this issue along with other issues while deciding the Suit;
- c. Applicant is at liberty to file application before the trial Court for framing issue as to whether City Civil Court, Bombay has territorial jurisdiction to entertain and try the Suit filed by the respondent No.1. All the contentions of the parties are expressly kept open in that regard;
- d. The parties are at liberty to apply for disposal of the Suit in a time bound manner. If such application is taken out, the learned trial Judge will pass appropriate orders thereon.

5. In view of the disposal of the Application, ad-interim order granted on 06.01.2016 stands vacated.

(R. G. KETKAR, J.)