

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2679 OF 2016

MR. ABHAY PANCHAMIA
AND ORS

...Petitioners

Versus

STATE OF MAHARASHTRA
AND ORS

...Respondents

....

Mr. J.G. Damani, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 11th APRIL, 2016

P.C.

1. Heard Mr. J.G. Damani, learned Counsel for the petitioners, at length.

2. By this Petition, under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs', have challenged the judgment and order dated 5.2.2016 passed by learned 1st Additional Principal District Judge, presiding over Court Room No.1 of City Civil Court at Dindoshi (Borivali Division), Goregaon in Transfer Application No.39/2015. By that order, the learned trial Judge has rejected the application made by the plaintiffs for transferring Suit No.3075/2015 pending in Court Room No.4 to another Court.

3. Perused the impugned order and in particular paragraph-7 thereof. Learned Additional Principal Judge has noted that the learned Judge, presiding over court Room No.4 has heard advocates for both parties and posted the matter for order on ad-interim relief. Mr. Damani states that the defendants took out application under Section 9-A of Code of Civil Procedure, 1908 (for short, CPC) raising issue of jurisdiction. Section 9-A of CPC reads thus :

“9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue:-- (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary,

pending determination by it of the preliminary issue as to the jurisdiction.”

4. Perusal of sub-section (2) of section 9-A shows that notwithstanding anything contained in sub-section (1), at the hearing of any application for interim relief, the Court may grant interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction. Mr. Damani also states that the petitioners are not pressing the allegations against the learned Judge presiding over Court room No.4 and they withdraw those allegations. In view thereof, it is not necessary to interfere with the impugned order subject to clarification that the learned trial Judge will pass order on ad-interim relief application and thereafter will proceed to consider the objections raised by the defendants under Section 9-A of CPC. Subject to this, the petition is disposed of as not pressed. Order accordingly.

5. All parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)