

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4779 OF 2016

Mr. Shamshad Mehboob Ali
And Anr

...Petitioners

Versus

Mr. Mohamed Mehboob Ali
And Anr

...Respondents

....

Ms. Yogita M. Deshmukh, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd APRIL, 2016

P.C.

1. Heard Ms. Yogita Deshmukh, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 15.2.2016 passed by learned Judge, presiding over court room No.2 of City Civil Court, Borivali Division, Dindoshi, Goregaon, Mumbai in Notice of Motion No.1514/2015 in Suit No.2497/2014. By that order, learned trial Judge rejected the motion taken out by the petitioners, hereinafter referred to as

'defendants', under Section 9-A of CPC. By that motion, the defendants prayed for framing following issues as preliminary issues :

- “(i) Do the Plaintiffs prove that this Honourable Court has jurisdiction to entertain & try the present Suit ?
- (ii) Do the Plaintiffs prove that the suit as filed is maintainable ? ”

3. After arguing the petition for quite sometime, Ms.Deshmukh seeks permission to withdraw this petition with liberty to file fresh Notice of Motion under section 9-A of CPC for framing preliminary issues and deciding them. She submits that the petitioners will give details in the affidavit in support of the Notice of Motion for deciding these preliminary issues. If such a motion is taken out, she submits that the learned trial Judge may be directed to dispose of the same uninfluenced by the impugned order. Ms. Deshmukh submits that on or before 13.6.2016 the defendants will take out fresh Notice of Motion. The defendants will not seek further extension of time for filing the motion. She submits that the next date of hearing before the trial Court is 26.4.2016 for consideration of ad-interim relief. She further states that though the suit is instituted in the year

2014, till date there is no ad-interim order.

4. In view thereof, the Petition is allowed to be withdrawn with liberty as prayed for and is disposed of. All contentions of the respondents-plaintiffs are kept open. Learned trial Judge will decide the Motion uninfluenced by the observations made in the impugned order. The defendants shall file Notice of Motion on or before 13.6.2016 and serve copy in advance on the other side. Till next date, the learned trial Judge will not proceed with the hearing on ad-interim relief. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)