

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL St.NO.15178 OF 2016
WITH
CIVIL APPLICATION NO.2584 OF 2016**

M/s Rupji Constructions

..Appellant

Versus

**Maharashtra Housing Area &
Development Authority & Ors**

..Respondents

**WITH
CIVIL APPLICATION NO.2637 OF 2016
IN
FIRST APPEAL St NO.15178 OF 2016**

Devi Dharamdas Wani Welfare Association

..Applicant

In the matter between

M/s Rupji Constructions

..Appellant

Versus

**Maharashtra Housing Area &
Development Authority & Ors**

..Respondents

Mr. S. S. Shah a/w Mr. S.V. Gole for the Appellant / Applicant

Mr. S. P Thorat for the Respondent No.1

Mrs. M. R. Bhoir for the Respondent No.2

**Mr. S. M. Gorwadkar Senior Advocate i/b Ganesh & Co. for the
Respondent Nos.3 to 8**

Mr. G. S. Godbole i/b Mr. Kunal Bhanage for the Respondent No.9

Mr. Kiran Jain for the intervenor

CORAM : R. M. SAVANT, J.

DATE : 15th JUNE, 2016

P.C.

1 The above First Appeal challenges the judgment and order dated
204-2016 passed by the Learned 2nd Additional Principal Judge, City Civil

Court, Mumbai, by which order, the Learned Judge has decided the issue of jurisdiction framed under Section 9A and ruled that the jurisdiction of the said Court is barred in view of the provisions of Section 177 of the MHAD Act. The Learned Judge has also rejected the plaint under Order VII Rule 11(d) of the Civil Procedure Code.

2 The Learned Counsel appearing on behalf of the Respondent No.9 on instructions of Mr. Rajendra Jain, partner of the Respondent No.9 and the Learned Senior Counsel appearing on behalf of the Respondent Nos.3 to 8 on instructions of Mr. Yogesh Ganjawala, Respondent No.3, make a statement that they have no objection to the impugned order being set aside and the matter being relegated back to the Trial Court for a denovo consideration of the said issue of jurisdiction. The Learned Counsel appearing for the Appellant i.e. the original Plaintiff has no objection to the said course of action being followed.

3 In view of the consensus between the parties, the need to give detailed reasons for setting aside the impugned order dated 20-4-2016 is obviated. The impugned order dated 20-4-2016 is accordingly set aside and the issue of jurisdiction of the City Civil Court Mumbai to entertain the Suit is relegated back to the City Civil Court Mumbai for a denovo consideration. Needless to state that it is only contingent upon the decision that would be rendered on the issue of jurisdiction that it would be for the Trial Court to

decide whether the Notice of Motion seeking rejection of the plaint under Order VII Rule 11(d) of the CPC is required to be considered. Hence only in the event the Court holds that it has the jurisdiction to try the Suit, it would then be necessary for the Court to consider the application under Order VII Rule 11(d) of the CPC.

4 In so far as the issue of jurisdiction is concerned, needless to state that the same would be decided on its own merits and in accordance with law uninfluenced by the instant order and the setting aside of the impugned order by consensus should not be construed as any expression of opinion on the merits of the case of either of the parties. Since the order is set aside, the Plaintiff would also be entitled to renew its application for ad-interim reliefs, however, the same would be considered on the touchstone of the principles applicable to an application under Section 9A (2) of the CPC. The Appeal from Order is accordingly disposed of.

5 In view of the disposal of the above Appeal from Order, the Civil Application Nos.2584 of 2015 and 2637 of 2016, do not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]