

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

CIVIL REVISION APPLICATION NO. 464 OF 2016

Chetan S. Bhadra alias Bhanushali.

.. Applicant

Vs.

Rasul Jainudin Shaikh.

.. Respondent

Mr.Prathamesh Kamat a/w Mr.Neil Mandevia, Nakul Jain and Harsh Behany i/b Maniar Srivastava Associates, for the Applicant.

Mr.Nitin Mulye, for the Respondent.

***CORAM : N.M.Jamdar, J.
Friday, 16 September 2016.***

P.C. :

Heard learned counsel for the parties. By consent the matter is taken up for final disposal forthwith.

2. The Applicant challenges the order passed by the learned City Civil Court Judge, on 16 June 2016 in Special Civil Suit No.379 of 2015 instituted by the Respondent-Defendant. By the impugned order the learned Judge has opined that issue of jurisdiction needs to be framed but it will have to be considered along with the other issues at the time of final argument of the suit. The Applicant had moved an application on 19 October 2015 regarding bar of section

42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and to frame preliminary issue regarding jurisdiction of the Court under Section 9A of the Code of Civil Procedure.

3. Section 9A of the Code, as interpreted by the various decisions of this Court and the Apex Court, mandates the Court to decide the issue of jurisdiction before the application for interim relief is finally decided. Section 9A(2) permits the Court to decide applications for ad-interim relief pending such ad-interim jurisdiction. It is informed that in the present case the prayer for ad-interim relief sought for by the Respondent-Plaintiff has been rejected and the Notice of Motion No.406 of 2015 is coming up for consideration before the learned City Civil Court Judge, on 22 September 2016. In view of the settled position, the learned City Civil Court Judge will have to consider the questions of jurisdiction in view of the preliminary issue sought to be raised by the Applicant before finally disposing of the Notice of Motion No.406 of 2015.

4. Therefore, it will be appropriate that both the issues, as to the jurisdiction of the City Civil Court in view of section 42 of the Act of 1971 and Notice of Motion No.406 of 2015 are heard together and decided. Needless to state that in case the preliminary issue is against Respondent-Defendant, the question of grant of any relief in

the Notice of Motion No.406 of 2015 will not arise. The learned counsel for the parties on instructions from their clients assure that they will proceed with both the aspects of preliminary issue and the Notice of Motion No.406 of 2015 on the date assigned and will not seek any adjournment unless absolutely necessary. In view of this clarification, no further orders are required to be passed in the Civil Revision Application. Keeping all the contentions of the parties on merits open, the Revision Application is disposed of in above terms.

(N.M.Jamdar, J.)