

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

Amk

**APPEAL FROM ORDER NO. 767 OF 2016
WITH
CIVIL APPLICATION NO. 967 OF 2016
IN
APPEAL FROM ORDER NO. 767 OF 2016**

Mr. Shaunak Dilip Kirkire

.. Appellant

Vs.

M/s. HNG Enterprises

.. Respondent

Mr. Sameer M. Tendulkar for the Appellant.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23rd AUGUST, 2016.

P. C. :

1. This appeal is preferred against the order dated 21.06.2016 passed by the City Civil Court, Mumbai in Notice of Motion No. 1985 of 2016 in Suit No. 848 of 2016.

2. The appeal is heard finally at the stage of admission itself, issue involved being very short one.

3. It is submitted that by the said Notice of Motion in the pending suit the appellant has requested the Trial Court to frame two preliminary issues; one relating to jurisdiction and another relating to limitation. It is urged that the Trial Court has allowed the Notice of Motion, partly by framing the issue relating to jurisdiction as preliminary, whereas rejected

the prayer for framing of issue relating to limitation as preliminary.

4. According to learned counsel for the appellant, even on the face of the pleading in the plaint, it can be seen that the suit is not filed within the period of six months, prescribed for the suit filed under Section 6 of the Specific Relief Act.

5. In order to advance this submission, learned counsel for the appellant has also tried to rely upon the electricity bill (Exhibit 'Y' on page 90) to show the plaintiff has paid the electricity bill lastly on 28.03.2011. Reliance is also placed on the letter dated 27.05.2016 (Exhibit 'G') issued by Municipal Corporation stating that the assessment of the suit property is cancelled w.e.f. 01.02.2015.

6. However, it can be seen that none of these two documents are categorical to the effect that due to demolition of the suit property, the electricity connection was disconnected on a particular date and assessment of the property was stopped on account of its demolition.

7. In such a situation, the Trial Court has rightly held that the issue of limitation is definitely a mixed question of the law and facts, particularly in the context of the present matter. The said observation of the Trial Court cannot be called as unjustified.

8. In view thereof, no fault can be found in the impugned order of the Trial Court. The appeal, therefore, holds no merits and hence, stands dismissed. All the contentions raised by the appellant herein are kept open.

9. In view of the dismissal of the appeal, the civil application therein also stands dismissed as having become infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]