

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.795 OF 2016

|                               |                |
|-------------------------------|----------------|
| Sunil S. Mirpuri              | ...Appellant   |
| V/s.                          |                |
| Smt.Eula H. Dularamani & Ors. | ...Respondents |

Mr.Y.V. Divekar with Mrs.Teja Thanekar – Patil, Ms.Sayali Ghanpure  
i/b Divekar & Co. for the Appellant.

Mr.Madhav Jamdar i/b Mr.Paras Yadav for the Respondents.

**CORAM : R.D. DHANUKA, J.**  
**DATE : 21ST SEPTEMBER, 2016.**

**P.C. :-**

1. By this appeal, the appellant (original defendant) has impugned the order dated 18<sup>th</sup> June, 2016, passed by the learned Civil Judge, Senior Division, Pune, allowing the application (Exhibit-5) filed by the original plaintiffs.

2. Mr.Divekar, learned counsel appearing for the appellant submits that though the issue of limitation was raised by the appellant (original defendant) before the learned trial Judge in the reply opposing application (Exhibit-5) filed by the respondents, the learned trial Judge has not framed an issue under section 9-A of the Code of Civil Procedure.

3. Mr.Jamdar, learned counsel appearing for the original plaintiffs states that the issue of limitation is not required to be framed under section 9-A of the Code of Civil Procedure in view of the latest judgment of the Supreme Court. He submits that this issue is referred to the Larger Bench.

4. Mr.Divekar, learned counsel for the appellant states that his client will make an application within two weeks from today to frame the issue under section 9-A of the Code of Civil Procedure before the learned trial Judge. Learned counsel for the respondents is permitted to oppose such an application on merits as well as the maintainability thereof.

5. It is made clear that this Court has not expressed any views whether such application for framing preliminary issue under section 9-A of the Code of Civil Procedure is maintainable or not at this stage and the said issue is kept open. If any such application is made by the original defendant, the learned trial Judge shall consider the maintainability of that application first before deciding the application on merits.

6. The order dated 18<sup>th</sup> June, 2016 shall be treated as *ad-interim* order and shall continue till the application under section 9-A of the Code of Civil Procedure, if made by the defendant is decided. The learned trial Judge shall make an endeavor to dispose of the

application, if made under section 9-A of the Code of Civil Procedure by the defendant within three months from the date of making such application. The reply to such application shall be filed within two weeks from the date of service of such application by the defendant.

7. In the event of the learned trial Judge rejecting the application, if filed by the defendant under section 9-A of the Code of Civil Procedure, it is made clear that the ad-interim order passed by the learned trial Judge on 18<sup>th</sup> June, 2016 shall be construed as final order on application (Exhibit-5).

8. The appeal from order is disposed of in aforesaid terms.  
No order as to costs.

**(R.D. DHANUKA, J.)**