

additional issue. The prayer made by defendant No.2 for framing and deciding the same issue as a preliminary issue under Order 14 Rule 2 of C.P.C. was rejected.

3. Mr. Gonsalves strenuously contended that Section 515A of the Act lays down that the save as otherwise provided in the Act, any notice issued, order passed or direction issued by the Designated Officer, under Section 351 or 354A can not be questioned in any suit or other legal proceedings. He submitted that respondent No.1, hereinafter referred to as plaintiff, has instituted Suit challenging notice dated 11/09/2009 issued under Section 354A of the Act by the respondent No.2, hereinafter referred to as defendant No.1. In view of Section 515A of the Act, notice dated 11/09/2009 issued under Section 354A cannot be questioned in any Suit. He submitted that this is a pure question of law and the issue of jurisdiction can be raised at any stage of proceedings. He relied upon following decisions.

- i) Kiran Singh Vs. Chaman Pawan; AIR 1954 Supreme Court 340.
- ii) S.S.Khanna Major Vs. Brig.F.J.Dillon, AIR 1964 Supreme Court 497.
- iii) Athmanathswami Devasthanam Vs. K.Gopalaswami Ayyangar; AIR 1965 Supreme Court 338
- iv) Abdul Rahman Vs. Prasony Bai; AIR 2003 Supreme Court 718.
- v) Abdul Karim Ahmed Mansoori Vs. Municipal Corporation of Gr.Mumbai 2013 (6) ALL MR 323.

vi) Mrs.Sarina E.Lopez Vs. Mr.Ajay Goverdhandas Kalantri in Cri Revision Application No. 448 of 2013 dated 16/01/2015.

4. He, therefore, submitted that the learned trial Judge may be directed to frame and decide issue of jurisdiction as a preliminary issue and not as and by way of additional issue.

5. On the other hand, Mr.Yadav submitted that Suit is instituted in the year 2009 challenging the notice dated 11/09/2009 issued under Section 354A of the Act. Section 515A is added with effect from 15/04/2013 and therefore, is not applicable to the Suit instituted prior to that date. He also relied upon the order dated 30/06/2014 passed by this Court (Coram : Smt. Sondur Baldota, J.) in Writ Petition No. 5698 of 2014 and in particular paragraph 5 thereof. In paragraph 5, it is observed that the decision in the case of Abdul Karim Ahmed Mansoori Vs. Municipal Corporation of Gr.Mumbai 2013 (6) ALL MR 323 does not lay down that Suit described under Section 515A of the Act would be per se not tenable in Court. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, Suit is instituted challenging notice dated 11/09/2009 issued under Section 354A of the Act. It is also not in dispute that under Section 515A is added with effect from

15/04/2013. In view thereof, it cannot be said that the said Section will be applicable even to the pending Suit. That apart in the case of **Abdul Karim Ahmed Mansoori** (*supra*), in paragraph 10, the Division Bench of this Court observed that in every individual case depending upon the pleadings, the issue of jurisdiction would have to be decided by the Civil Court. The applicability of Section 515A and the issue of jurisdiction must be, therefore, gone into, dealt with and decided in each case depending on the pleas raised by parties.

7. In view thereof as also in view of the order dated 30/06/2014 passed by this Court in Writ Petition No. 5698 of 2014, I do not find that the learned trial Judge has committed any error in partly allowing the Motion and framing the issue about jurisdiction under Section 515A as the additional issue.

8. Mr. Gonsalves submitted that the bar of Section 515A is a pure question of law and not a mixed question of law. In view of paragraph 10 of the decision in **Abdul Karim Ahmed Mansoori** (*supra*), I do not agree with this proposition. Hence, Application fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)