

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

WRIT PETITION NO.467 OF 2016

R. C. Kotiankar

.. Petitioner

Versus

K. J. Sunnykutty and another

.. Respondents

Mr. P. S. Kulkarni, for the Petitioner.

Mr. S. S. Shamim, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 22nd FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 14.09.2015 passed by the Learned Judge of the Small Causes Court, Mumbai, by which order the application Exh.49 filed by the Petitioner/ original Defendant for framing of a preliminary issue relating to limitation and maintainability came to be rejected. The framing of the said issue was sought relying upon Section 9-A of the CPC. It is required to be noted that there is no application for interim relief filed by the Plaintiff, wherein in reply to the said application plea of limitation is taken by the Defendant. The Trial Court has rejected the said application Exh.49 on the aforesaid ground as also having regard to the fact that the suit is at the stage where the affidavit of evidence has been filed on behalf of the Plaintiffs. It is

required to be noted that earlier also an application was filed by the Petitioner which was rejected by the Trial Court giving rise to filing of Writ Petition No.2930 of 2015 which Petition came to be dismissed by the Learned Single Judge of this Court (M. S. Sonak, J.) by order dated 03.07.2015. In so far as the issue of limitation is concerned, it has been observed in the said order to the following effect :-

“Although there is no necessity to interfere with the impugned order, it must be noted that under Section 3 of the Limitation Act, 1963, every suit instituted after the prescribed period of limitation is required to be dismissed although limitation has not been set out as a defence. Therefore, irrespective of whether any issue of limitation is framed or not, it is the duty of the Court, to satisfy itself as to whether the suit as instituted is within limitation or not.”
(excerpt)

2. In the light of what has already been observed in the earlier Writ Petition, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]