

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12061 OF 2013

Ratnakar Jaywant Kulkarni .. Petitioner

vs.

Mr.Ramesh Jaywant Kulkarni and Ors. .. Respondents

Mr.Nitin Vatkarn with Mr.G.S.Hiranandani for the petitioner

Mr.Aditya Sikka i/b M/s.Bharucha and Partners for the respondent
nos.1 to 3

CORAM : K. K. TATED, J.
DATE : MARCH 29, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, petitioner plaintiff challenges the order dated 12.12.2013 passed by Small Causes court framing preliminary issue about Jurisdiction under section 9A of the Code of Civil Procedure, 1908.

3 It is the case of the plaintiff that he filed R.A.D.& E. Suit No.1370 of 2013 in the court of Small Causes Court at Bombay for declaration

that he is the sole tenant of the suit premises i.e. flat no.6 on the first floor of Sai Krupa Building, 42A, V.N.Naik Marg, Gowalia Tank Road, Mumbai 400 036 and directing respondent defendant to hand over vacant, peaceful possession of the suit premises to the plaintiff and restraining the respondent no.4 landlord of the suit premises from executing any agreement/writing with the respondent defendant nos.1 to 3 for permanent alternate accommodation in lieu of the suit premises.

4 The learned counsel for the plaintiff submits that plaintiff preferred application dated 16.9.2013 for an order of injunction restraining the respondents defendants for maintaining the status quo in respect of the suit premises and directing defendant no.4 not to execute any agreement/writing with the defendant nos.1 to 3 for permanent alternate accommodation. He submits that in the said injunction application Exhibit No. 9 of 2013 defendant nos.1 to 3 filed their reply and raised preliminary issue about jurisdiction of the Trial Court.

5 The learned counsel for the plaintiff submits that the plaintiff filed suit for declaring him as a tenant of the suit premises. He submits that for declaration of tenancy, only the Small Causes Court had jurisdiction. Hence, the objection raised by the respondent defendant nos.1 to 3 about jurisdiction is not maintainable. Therefore, the impugned order passed by Trial Court dated 12.12.2013 framing preliminary issue about jurisdiction be set aside and Trial Court be directed to decide the plaintiffs application for injunction below

Exhibit-9 on its own merits.

6 On the other hand, the learned counsel for defendant nos.1 to 3 vehemently opposed the present Writ Petition. He submits that once the preliminary issue is raised under section 9A of the Code of Civil Procedure (Maharashtra Amendment) Act, 1977, it is binding on the Court to decide the same on its own merits. Hence, there is no substance in the present Writ Petition and same be dismissed.

7 I have heard both the sides at length. It is to be noted that in the present proceeding respondent defendant nos.1 to 3 filed their Affidavit-in-Reply to Exhibit-9 the application filed by plaintiff and raised preliminary issue. On the basis of those objections, the Trial Court framed issue about Jurisdiction by order dated 12.12.2013. It is to be noted that the Apex Court in the matter of ***Foreshore Co-operative Housing Society Limited and Ors. vs. Praveen D. Desai and Ors., 2015 (6) SCC 412*** held that once the preliminary issue is framed under section 9-A of the Code of Civil Procedure (Maharashtra Amendment) Act, 1977, same be decided on its own merits before deciding other issues.

8 Considering the facts of the present case and the law declared by the Apex Court, I do not find any substance in the present Writ Petition. As preliminary issue is framed by Trial Court in 2013 and same was pending because of pendency of the present Writ Petition I am of the opinion that in the interest of Justice Trial Court to decide the said preliminary issue as early as possible on its own merits by giving full

opportunity to both the sides. Hence, following order is passed:

- a) Writ Petition stands rejected.
- b) Trial Court is directed to decide the preliminary issue as framed by the order dated 12.12.2013 as early as possible after giving opportunity to both the sides.

JUDGE