

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 23 OF 2016

VIJAY HARAKCHAND SHAH
AND ANR

...Applicants

Versus

MS. ROSHANI SUKHRAJI BAFNA

...Respondent

....

Ms. Yogita Deshmukh, Advocate for the Applicants.

Ms. Roshani S. Bafna, Respondent present in-person.

....

CORAM : R. G. KETKAR, J.

DATE : 07th APRIL, 2016

P.C.

1. Not on board. At the request of Ms. Bafna, taken up for admission.
2. Heard Ms. Yogita Deshmukh, learned Counsel for the applicants and Ms. Roshani @ Sandhya Sukhrajji Bafna, respondent in person, at length.
3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC'), the applicants have challenged the judgment and order dated 14.8.2015 below

Exhibit-1 and the judgment and order dated 17.10.2015 below Exh.53 in R.C.S. No.46/2015 passed by learned Joint Civil Judge, Junior Division, Dahanu. By order dated 14.8.2015 below Exhibit-1, learned trial Judge held that the Civil Court has jurisdiction to entertain and try the suit and overruled the objections as regards suit being barred by limitation raised by the applicants, hereinafter referred to as the 'defendants'. By order dated 17.10.2015 below Exhibit-53, learned trial Judge rejected the application made by the defendants under Section 114 read with Order 47 Rule 1 of CPC for review of the order dated 14.8.2015.

4. Ms. Deshmukh submitted that the defendants had filed application at Exhibit-19 under Section 9-A read with Order 7 Rule 11 of CPC on 30.3.2015. However, pending that application, the respondent's application for injunction was rejected on 10.6.2015. She, therefore, does not press this application and seeks liberty to take out appropriate proceedings for rejection of the plaint on the ground amongst others the decision of the Apex Court in the case of **T. ARIVANDANDAM vs. T.V. Satyapal and another, (1977) 4 SCC**

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5. Ms. Bafna states that if such a liberty is given to the applicants, all contentions of the respondent including maintainability of such application may be kept open. She submitted that it may be clarified that such liberty is if permissible in law. In view thereof, on the motion made by Ms.Deshmukh, application is allowed to be withdrawn with liberty as prayed for. Grant of liberty shall not be construed as an expression on merits either way. The defendants are permitted to file application, as indicated hereinabove, if permissible in law. All contentions of the respondent on merits, including maintainability of proposed application, are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)