IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL SIDE JURISDICTION
NOTICE OF MOTION NO.853 OF 2016
IN
APPEAL (L) NO.7 OF 2016
IN
NOTICE OF MOTION (L) NO.285 OF 2014
IN
SUIT NO.609 OF 2014

Smt. Jadabibai Jhumarlal Jain (Mutha). .. Applicant

In the matter of :

Smt. Jadabibai Jhumarlal Jain (Mutha). .. Appellant
Vs
Madan Gulabchand Jain and Others. .. Respondents
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Shri P.B. Shah i/b Shri K.P. Shah for the Applicant.
Shri Aspi Chinoy, Senior Counsel along with Ms. Jyoti Sinha i/b Negandhi Shah and Himayatullah for the Respondent No.19.
Ms. Tanmayi Rajadhyaksha i/b RMG Law Associates for the Respondent Nos.1, 2(a) to 2(c) and 3, 4, 6 and 7.
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CORAM : A.S. OKA & P. D. NAIK, JJ
DATED : 7TH APRIL 2016

P.C.

1. Heard learned counsel appearing for the Applicant and the learned senior counsel appearing for the Respondent No.19. Even according to the case of the Applicant, there is a delay of 614 days in filing an Appeal and, therefore, the prayer in this Notice of Motion is for condonation of delay in preferring Letters Patent Appeal.

2. The Applicant is the original Plaintiff. By the order impugned in the Appeal, the challenge is to the order made by the learned Single Judge on 2nd April 2014 by which a preliminary issue of limitation in exercise of powers under Section 9A of the Code of Civil Procedure, 1908 has been framed. It is an admitted position that only after an affidavit-in-lieu of the examination-in-chief was filed for the purposes of hearing of the preliminary issue and after the cross-examination was commenced that the present Appeal has been preferred.

3. As of today, the law laid down by the Apex Court in the case of ***Foreshore Co-operative Housing Society Limited v. Praveen D. Desai (Dead) Through Lrs. And Others***[1] holds the field which lays down that even an issue of bar of limitation will have to be framed in exercise of the power under Section 9A of the Code of Civil Procedure, 1908 as issue of jurisdiction includes issue of limitation. The learned counsel appearing for the Applicant relied upon the order of reference dated 17th August 2015 by which the Apex Court has referred the issue to a larger Bench.

4. The law on this aspect is well settled. As held by the Apex Court in the case of ***Ashok Sadarangani and Another v. Union of India and Others***[2]***,*** what continues to bind this Court is the aforesaid

1 (2015)6 SCC 412
2 AIR 2012 SC 1563

decision in the case of ***Foreshore Co-operative Housing Society Limited.***

5. In view of the said decision, it is not possible to find fault with the impugned order. The learned Single Judge has passed an order in terms of the law which continues to bind this Court.

6. Hence, there is no merit in the main Appeal. Accordingly, the Notice of Motion and the Appeal are dismissed.

7. The learned counsel appearing for the Applicant sought time of one week on the ground that the reference is likely to be heard by the Apex Court. What binds this Court today is the decision in the case of ***Foreshore Co-operative Housing Society Limited*** and hence, the said prayer is not accepted.

(P. D. NAIK, J) (A.S. OKA, J)