

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 118 OF 2009
IN
NOTICE OF MOTION NO. 2642 OF 2006
IN
SUIT NO. 3799 OF 1998**

Messrs Carona Ltd., ... Appellants.

V/s.

Sakinabai Qutubuddin Khokhar & Ors. ... Respondents.

None appears for the parties.

**CORAM : V. M. KANADE AND
MRS.SWAPNA JOSHI,JJ.**

DATE : 31st AUGUST, 2016

P.C. :

1 None for the Appellants and the Respondents.

2 Appeal is filed against the judgment and order dated 9th February, 2009 passed by the learned single Judge of this court in Notice of Motion No. 2642 of 2006.

3 The brief facts relevant for the purpose of deciding this appeal are as under :

4 Appellants are original Defendants and Respondents are original Plaintiffs. Hereinafter, they are

referred as Plaintiffs and Defendants for the sake of convenience.

5 Notice of Motion No. 2642 of 2006 taken out by the Plaintiffs was partly allowed. The Defendants were directed to deposit sum of Rs. 10,000/- per month with the Court Receiver towards compensation. Plaintiffs were seeking directions that the Court Receiver should be directed to pay entire amount of Rs.10,000/- to them. By earlier order, the Plaintiffs were permitted to withdraw sum of Rs. 2,200/- per month out of Rs. 12,500/- which were being deposited by the Defendants. The Defendants have raised the issue of jurisdiction of the court. Reliance was placed on the decision of the Full Bench of this Court in the case of **Prabhudas Damodar Kotecha & Anr. vs. Smt. Manharbala Jeram Damodar & Ors.**, reported in 2007 (5) Mh.L.J. 341. In the said judgment, the court had considered the issue of jurisdiction, which could be raised in the suit. Learned single Judge, however, observed that the court was not deciding the issue of jurisdiction at that stage.

6 The Defendants possessed one shop where they were running a business of shoe shop on the basis of the conducting agreement. The court observed that it had permitted the Plaintiffs to withdraw Rs. 5000/- per month. It was clarified that this is without prejudice to the rights and contentions of both the sides. It was also clarified that the

Defendants are not precluded from raising the issue of jurisdiction and all contentions are kept open.

7 In our view the learned single Judge has given cogent reasons while partly allowing the notice of motion. We do not see any reason to interfere with the well reasoned order passed by the learned single Judge. The present appeal deserves to be dismissed.

8 The Appeal is dismissed accordingly.

(MRS.SWAPNA JOSHI,J.)

(V. M. KANADE,J.)

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