

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1435 OF 2013
IN
SUIT NO.724 OF 2013**

Prem Bhagwandas Harjani

....Applicant/Plaintiff

V/s.

Dayal Harjani & Ors.

....Defendants

Mr.Dipesh Mohan Gaonkar for the applicant/plaintiff.

Ms.Kausar Banatwala i/by Tushar A.Goradia for defendant nos.2 & 3.

CORAM : K.R.SHRIRAM,J

DATE : 25.11.2016

P.C.:-

1 The counsel for the applicant/plaintiff seeks leave to withdraw the Notice of Motion. Notice of Motion dismissed as withdrawn. Ms.Kausar Banatwala for defendant nos.2 & 3 objects to the Court permitting the applicant to withdraw the Notice of Motion. According to the counsel after the plaintiff has taken out this Notice of Motion, the defendant nos.2 & 3 had raised an issue of jurisdiction and this Court was pleased to frame issue of jurisdiction under Section 9A of the Code of Civil Procedure 1908. The counsel also states that the plaintiff was directed to file evidence on the issue of section 9A and the Commissioner was appointed. The plaintiff filed the evidence but the witness did not make himself available for cross-examination. The counsel states that this direction was passed more than two years ago.

2 Having heard the counsel, in my view, that will still not come in the way of the plaintiff wanting to withdraw the Notice of Motion. The counsel for the plaintiff states that this Court having refused to grant ad-interim relief and in view of the fact that due to pendency of this Notice of Motion, section 9A issue was framed, the counsel seeks to withdraw the Notice of Motion. In view thereof, plaintiff is allowed to withdraw Notice of Motion. Notice of Motion dismissed as withdrawn. Plaintiff to pay sum of Rs.5000/- as cost to defendant nos.2 & 3 to this Notice of Motion.

3 Since this Notice of Motion has been withdrawn, the issue framed under Section 9A does not survive any more. The issue of jurisdiction will be framed as the first issue. As on date the defendants are yet to file written statement. Defendants are directed to file written statement and serve a copy thereof within four weeks from today.

4 Within two weeks parties to file their respective affidavit of documents and within one week thereafter, parties to give inspection of all the documents relied upon by them to each other and also exchange statement of admission and denial with reasons for denial. Suit be listed for issues on 13.2.2017.

(K.R.SHRIRAM,J)