

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3513 OF 2017

M/s. Mayuresh Symphony L.L.P.

Through its partners

... Petitioners

Vs.

Manish Balkrishna Joshi & Anr.

... Respondents

Mr. Prakash G. Lad, Advocate for the petitioners.

Mr. Pradeep D. Dalvi, Advocate for respondent no. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **28th June, 2017.**

P.C.:

Rule. Rule made returnable forthwith. By consent, the Petition is heard finally and disposed of at the stage of admission.

2. In this Writ Petition, the order dated 3rd September, 2016 passed by the Joint Civil Judge Senior Division, Thane below Exhibit 18 is under challenge. The defendant has moved an application under section 9A r/w. Section 151 of Civil Procedure Code for framing the preliminary issue of limitation. The trial Court has referred the findings given by the Hon'ble Supreme Court in **Jagdish Shyamrao Thorave** and held that the issue of limitation raised by the defendant nos. 1 and 2 can be decided along with other issues at the trial of the suit, as it is mixed question of facts and law and no prejudice will be caused to the defendants if the issue is kept open

for decision at the trial.

3. The learned counsel for respondent no. 1 relied on the order of the Hon'ble Supreme Court in the case of **Jagdish Shyamrao Thorve vs. Shri Mohan Sitaram Dravid & Ors., in Special Leave to Appeal © No. 22438 of 2015 dated 17th August, 2015**, wherein it is held as follows:

“It is pertinent to mention here that the pronouncement in Kamalakar Eknath Salunkhe vs. Baburav Vishnu Javalkar (2015) 3 SCALE 34, was directly on the interpretation of Section 9A of the Code of Civil Procedure, whereas the decisions which have been relied upon in Foreshore Cooperative Housing Society Limited (supra) are not on Section 9A of the Maharashtra Amendment Act in the Code of Civil Procedure. Therefore, we are inclined to think that the authority in Kamalakar Eknath Salunkhe (supra) was a binding precedent on the later Bench and, therefore, it should have been referred to a larger Bench.”

4. In view of this, as the issue is referred to the larger Bench and it is held that the view taken in the case of *Kamalakar Eknath Salunkhe* is directly on the interpretation of Section 9A of the Code of Civil Procedure and thus, it holds the field and the issue is still pending before the larger Bench of the Supreme Court. The view taken by the trial Court cannot be faulted with. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)