

Mr. Sandesh Patil i/b. Mr. Chintan Yogesh Shah for Petitioners.
Mr. Yogesh B. Dandekar for Respondents No.9 to 12.
Mr. Anil S. Navale i/b. Ms Vishranti A. Navale for Respondent No.13.

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- b. *Foreshore Co-operative Housing Society Limited Vs. Praveen D. Desai*, (2015) 6 SCC 412;
- c. Order dated 17.08.2015 passed by the Apex Court in *Jagdish Shyamrao Thorve Vs. Mohan Sitaram Dravid*; and
- d. *Ashok Sadarangani Vs. union of India*, (2012) 11 SCC 321.

4. Mr. Patil submitted that in **Kamlakar Eknath Salunkhe's case** (*supra*), the Apex Court was dealing with application made under Section 9-A of C.P.C. In paragraph 20, the Apex Court observed that perusal of Statement of Object and Reasons of the Amendment Act would clarify that Section 9-A talks of maintainability only on the question of inherent jurisdiction and does not contemplate issues of limitation. Section 9-A has been inserted in the C.P.C. to prevent the abuse of the Court process where a plaintiff drags a defendant to the trial of the Suit on merits when the jurisdiction of the Court itself is doubtful. In other words, he submitted that the Apex Court held that while deciding application under Section 9-A, issue of limitation cannot be framed.

5. In the case of **Foreshore CHSL** (*supra*), the Apex Court considered the decision of **Kamlakar Eknath Salunkhe** (*supra*). He invited my attention to paragraph 2 of **Foreshore CHSL** (*supra*). In paragraph 2, the Apex Court observed that the question about ambit and scope of Section 9-A C.P.C. as inserted by the C.P.C. (Maharashtra Amendment) Act, 1977 vis-a-vis Order XIV, Rule 2 of C.P.C was raised in these appeals. In paragraph 45, the Apex Court referred to the Constitution Bench decision in the case of **Pandurang Dhondi Chougule Vs. Maruti Hari Jadhav**, AIR 1966 SC 153 and other decisions in paragraphs 46 to 49. In paragraph 50, the Apex Court

referred to **Kamalakar Eknath Salunkhe's** judgment and in paragraph 51, the Apex Court observed that the decision rendered by the Division Bench in the case of **Kamlakar Eknath Salunkhe** (*supra*) is contrary to the law settled by the Constitution Bench and three Judges Bench of the Apex Court, followed by another Division Bench in **Pandurang Dhondi Chougule's case** (*supra*). It was further observed that the Constitution Bench decision and other decisions given by the larger Bench are binding on them and that those decisions have not been brought to the notice of the Division Bench taking a contrary view.

6. Mr. Patil invited my attention to the order dated 17.08.2015 passed by the Apex Court in **Jagdish Shyamrao Thorve** (*supra*). After quoting paragraph 51 of **Foreshore CHSL** (*supra*), the Apex Court observed that the pronouncement in **Kamalakar Eknath Salunkhe** (*supra*) was directly on the interpretation of Section 9-A of C.P.C., whereas the decisions which have been relied upon in **Foreshore CHSL** (*supra*) are not on Section 9-A of the Maharashtra Amendment Act in C.P.C. The Apex Court, therefore, opined that the authority in **Kamalakar Eknath Salunkhe** (*supra*) was a binding precedent on the later Bench, and therefore, it should have been referred to the larger Bench.

7. Mr. Patil relying upon this portion contended that the Apex Court has held that the authority in **Kamalakar Eknath Salunkhe** (*supra*) is a binding precedent and therefore, issue of limitation cannot be framed as a preliminary issue under Section 9-A of C.P.C.

8. In the case of **Ashok Sadarangani** (*supra*), and in particular paragraph 19, the Apex Court has observed thus,

“19. As was indicated in Harbhajan Singh's case (*supra*), the pendency of a reference to a larger Bench, does not

mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh's case (supra) need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

9. Perusal of the above extracted portion shows that the Apex Court has observed that till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field. In other words, so long as the later decision of Foreshore CHSL is not either modified or altered in any way, it will continue to hold the field. In view thereof, I do not find that the learned trial Judge has committed any error in framing issue of limitation as a preliminary issue. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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