

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 744 OF 2013***

Godrej Consumer Products Ltd.	...Petitioner
Versus	
Mr. Anup Chaganlal Chavan	...Respondent

Mr. Tejas Deshmukh, for the petitioner.
None for the respondent

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 4th December, 2017.***

P.C. :

1. None present for the respondent, although served. Heard the learned counsel for the petitioner.
2. The petitioner happens to be the defendant in Special Civil Suit No.1363 of 2008 pending before the 4th Joint Civil Judge, J.D., Pune. Being aggrieved by the orders dated 23.11.2012 and 15.12.2010, has approached this Court by filing the present Writ Petition.
3. The facts of the case in a nutshell are that the petitioner had filed an application under Section 9A of the Code of Civil Procedure, challenging the jurisdiction of the Pune Court to try the subject suit as

parties were bound by a decree by virtue of a coupon which read with any dispute would be subject to Mumbai Jurisdiction only. It is in view of this, the defendant had filed an application challenging the territorial jurisdiction of the Court at Pune.

4. The issues were framed and thereafter the suit was transferred to 3rd Joint Civil Judge, Junior Division, Pune. The application filed by the defendant under Section 9A was decided in absence of both the parties as both the parties were not present when the preliminary issue in respect of the territorial jurisdiction was decided and hence the defendant had filed an application seeking recall of the impugned order dated 15.12.2010 wherein the Court had recorded a finding that the Court at Pune has the jurisdiction. It was specifically averred that an opportunity was not given to the defendant to substantiate his contentions in the application under Section 9A. In fact, both the parties were heard at th time of framing of issues and therefore, it was a legal point which ought to be decided by the Court. However, the learned Judge has rejected the application seeking recall of the order dated 23.11.2012.

5. This Court is of the opinion that in fact the parties were heard at the time of framing of preliminary issues and the legal issue was to be decided by the Court. However, the Court has decided the issues in the absence of both the parties and, therefore, the defendant deserves to be heard. The learned Court shall hear the defendant on the point of jurisdiction as the application was filed by the defendant. The defendant shall file a fresh application within four weeks from today. However, the grant of liberty to file a fresh application shall not be construed as a rejection of the order dated 23.11.2012. It is only for the satisfaction of the parties that the Court shall hear the parties and decide the issue of jurisdiction in accordance with law. In the eventuality the application is filed on or before 21.12.2017, the learned Court shall decide the said application within four weeks from the date of its filing.

6. It is made clear and reiterated that the Court has not gone into the merits of the matter, but only in order to give a fair opportunity to the defendant, the liberty is being granted.

7. The Petition is disposed of in the above terms. Rule is made absolute accordingly.

(SMT. SADHANA S.JADHAV, J.)