

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 147 OF 2017

Nenshi Akha Gala

...Appellant

Versus

Maharashtra Housing & Area Development Authority & Ors ...Respondents

Mr Mayur Khandeparkar, *i/b Law Square, for the Appellant.*
Mr Kamlesh Ghume, *with Sonali Sabale, for Respondents Nos. 1 to 5*
(MHADA).
Mr Jayesh Mistry, *for Respondent No. 6.*

CORAM: G.S. PATEL, J
DATED: 17th July 2017

PC:-

1. Mr Khandeparkar for the Appellant is correct in saying that the Trial Court ought to have framed a preliminary issue on jurisdiction under Section 9A of the Code of Civil Procedure 1908 that the Suit is barred by limitation in view of the plea taken in paragraph 2 of the written statement, at internal page 6. If the Plaintiff fails on that issue, no question of any interim/ ad-interim relief can then possibly arise.

2. In the impugned order, without considering the question of limitation in a strict sense, reliefs have been denied *inter alia* on the ground of delay.

3. It is now well settled that once an issue is raised in this fashion, it is incumbent on the Court to frame a preliminary issue, allow parties to lead evidence if they so desire and to decide that preliminary issue first.¹

4. On this ground alone, the matter will have to be remanded for hearing on the preliminary issue. To save time, the preliminary issue is framed as follows:

“Whether the Suit as filed is within limitation?”

5. Parties will appear before the Trial Court on 2nd August 2017 and intimate the Trial Court whether they are desirous of leading evidence. The Trial Court will pass necessary directions on production of an authenticated copy of this order and will set a schedule for evidence and final hearing.

6. All contentions are left open. The Trial Court will decide the preliminary issue uninfluenced by the observations in the interim order under Appeal.

1 *Foreshore Co-operative Housing Society Ltd v Praveen D Desai & Ors*, (2015) 6 SCC 412; *Mukund Ltd v Mumbai International Airport Ltd*, 2011 (5) Bom CR 456; *Sandeep Gopal Raheja v Sonali Nimish Arora*, Appeal (L) 900 of 2015 decided on 5th August 2016.

7. The Appeal is disposed of in these terms. No order as to costs.

8. The Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J)