

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION**

WRIT PETITION NO. 6151 OF 2014

Prabhakar Maruti Kondhalkar & Ors. .. Petitioners

v/s.

Someshwar Balasaheb Kondhalkar & Ors. .. Respondents

Mr. Shriram S. Kulkarni for the petitioners
Mr. Deepak K. Puranik for respondent no.1

**CORAM : M.S. SANKLECHA, J.
DATED : 26th SEPTEMBER, 2017**

PC.

1. This petition under Article 227 of the Constitution of India challenges the order dated 29th March, 2014 passed by the 3rd Joint Civil Judge, Junior Division, Pune. By the impugned order, the petitioner's application to consider the issue of limitation as a preliminary issue under Section 9A of the Code of Civil Procedure, 1908 (the Code) was rejected on the ground that "issue of limitation cannot be framed by taking recourse of Section 9A of the CPC".

2. On 20th August, 2014, notice was issued to the respondents and in the meantime the trial Court was restrained from proceeding

further with the suit. The parties were also put to notice that the petition is likely to be disposed of finally at the stage of admission.

3. The issue arising in the impugned order is no longer *res integra* as it stands concluded in favour of the petitioners by the decision of the Apex Court in ***Foreshore Co-operative Housing Society Ltd. Vs. Pramod D. Desai and Ors. (2015) 6 SCC 412***. In the above case, the Apex Court held that the issue of limitation will be an issue of jurisdiction as contemplated under Section 9A of the Code. Further, the Apex Court observed that once the issue of jurisdiction is raised by invoking Section 9A of the Code then, the Court is bound to decide the issue of jurisdiction u/s 9A of the Code.

4. In the above view, the impugned order dated 29th March, 2014 is quashed and set aside. The trial Court is directed to frame the preliminary issue u/s 9A of the Code with regard to the question of limitation as urged by the petitioner – original defendant before it.

5. The parties are at liberty to move an application before the trial Court for early disposal of the preliminary issue. The parties are

directed to appear before the trial Court on 6th November, 2017 at 11.00 p.m.

6. The petition is disposed of in the aforesaid terms. No order as to costs.

The parties to act on copy of this order duly authenticated by the Associate of this Court.

(M.S. SANKLECHA, J.)