

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

CIVIL REVISION APPLICATION NO.404 OF 2017

Shri Mandal Villa Co-operative
Housing Society Builder and
Pvt. Ltd. & Ors

... Applicants

Vs.

Imtiyaz s/o. Ismail Baig & Ors.

... Respondents

with

CIVIL REVISION APPLICATION NO.406 OF 2017

Mandal Villa Co-op. Housing & Ors.

... Applicants

Vs.

Peer Karamali Shah Dargah Trust & Ors.

... Respondents

Mr.Sharique Nachan i/b Akhlaque M.S. Solkar for the Applicants

Mr.Anoop Patil for Respondent No.1 in CRA/404/2017

Mr.S.A. Khan i/b Judicare Law Associates for Resp. Nos.2 to 2C in
CRA/404/2017 and for resp. Nos.4 to 7 in CRA/406/2017

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 28, 2017**

P.C. :

1. In both these Civil Revision Applications, the orders dated 19.7.2017 passed by the Appellate Wakf Tribunal, Aurangabad, is under challenge. The plaintiff has filed proceedings before the

Wakf Tribunal praying for declaration and injunction against the respondents. As per the case of the plaintiff, the construction is going on in the suit land which belonged to the Wakf. Therefore, he filed application under Order XXXIX Rule 2A of the Civil Procedure Code seeking injunction against the construction. At the same time, the defendants also filed application under section 9A of the Civil Procedure Code raising an objection to the jurisdiction of the Court. The Tribunal on 19.7.2017 passed an order that the application under section 9A of the Civil Procedure Code and the application under Order 39 Rule 1 will be heard jointly on the next date.

2. Heard the learned Counsel for the parties.

3. It is a settled position of law that if an application raising preliminary issue under section 9A of the Civil Procedure Code is filed, then, it is mandatory for the Court/Tribunal to deal with that objection and then to proceed with the interim application filed under Order 39 of the Civil Procedure Code. This is supported by the ratio laid down by this Court in the case of **Mukund Ltd. vs. Mumbai International Airport & Ors.**¹. I make it clear that in fact,

¹ 2011 Vol.113(2) Bom.L.R. 1164

the impugned order dated 19.7.2017 cannot be treated as an order but it is a noting of the Court in the Roznama and hence, the learned Tribunal is directed to first hear and decide the applications under section 9A of the Civil Procedure Code and only thereafter, take up the applications under Order 39 immediately.

4. With the above order, Civil Revision Applications are disposed of.

(MRIDULA BHATKAR, J.)