

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

WRIT PETITION NO. 10568 OF 2015

Mr. Samir Narain Bhojwani

...Petitioner

Versus

Mr. Yusuf Khan alias Dilip Kumar & Ors. ...Respondents

Mr. P.K. Dhakephalkar, Senior Advocate, a/w Mr. Parimal Shroff, Mr. D.V. Deokar and Mr. Pinakin Modi, i/b M/s. Parimal Shroff & Co., for the Petitioner.

Mr. G.S. Godbole, a/w Mr. Chirag Shah, i/b Shah M.R. & J.J. Shah, for the Respondent No. 1.

Ms. Shiesha Sheth, a/w Mr. Saahil Jibliwalla, i/b FZB & Asso., for the Respondent No. 2.

Mr. Shrey Shah, i/b Jahagini Narula & Asso., for the Respondent No. 4.

CORAM : N.M. JAMDAR, J.

DATE : 2 February 2017

ORAL ORDER :

1. The Petitioner has challenged the order dated 12 August 2015 passed by the Appellate Bench of Small Causes

Court, wherein the Misc.Appeal filed by the Petitioner challenging the order dated 31 October 2013 to the extent ad-interim relief granted on 25 September 2013, was vacated.

2. The Petitioner is the Plaintiff who has instituted a Suit bearing R.A.E. Suit No. 1063 of 2010. In this Suit, an Interim Application No. 9 of 2011 was filed by the Petitioner-Plaintiff seeking interim injunction to restrain the Respondents from doing the work of excavation of the suit property and to carry out construction and also to restrain the Respondents from dealing with or disposing of or encumbering the suit property. Ad-interim relief was granted in favour of the Petitioner in the Interim Application on 25 September 2013. Thereafter, an Application below Exh.1 was taken out by the Respondents questioning the jurisdiction of the Court and a preliminary issue under Section 9A of the Code of Civil Procedure, 1908 was framed by the learned Small Causes Court, Judge. By order dated 31 October 2013, the learned Judge held that in the facts and circumstances of the case, it was not necessary to continue the ad-interim order. Against vacating the ad-interim relief, Misc.Appeal No. 87 of 2013 was filed by the Petitioner before the Appellate Bench and Appellate Bench of Small Causes Court dismissed the Appeal by order dated 12 August 2015, primarily holding that the Appeal was not maintainable.

3. Against this order, the Petitioner has filed the
Sharayu.

present Writ Petition. By order dated 21 October 2015, the learned Single Judge directed the Small Causes Court to decide the issue under Section 9A as expeditiously as possible and within a period of eight weeks. Additional Affidavits have been filed by the Petitioner and the Respondents. It is placed on record that the preliminary issue has been framed under Section 9A of the Code of Civil Procedure, 1908 has been answered in favour of the Petitioner and the Suit is held to be maintainable.

4. Since the Petitioner has filed this Petition primarily on the issue of grant of injunction against the Respondents, the position as on today that the Suit is held to be maintainable. However, the ad-interim relief has been vacated. The Interim Application is still pending. Now the learned Small Causes Court, Judge has held that the Court has jurisdiction to try the Suit and that due to the proceedings which enumerated above, the Application for interim injunction has remained to be decided. It will be appropriate, looking the nature of the controversy, that Interim Application be decided at the earlier stage. Though the Revision is filed by the Respondents is pending, there is no stay to the proceedings in the Suit. It is informed that parties have filed their replies and pleadings are complete in the Interim Application.

5. Accordingly, the Writ Petition is disposed of by directing the learned Small Causes Court, Judge to decide the

Interim Application No. 9 of 2011 within a period of twelve weeks from today. All contentions of the parties on merits are kept open. The Interim Application will be decided on its own merits.

[N.M. JAMDAR, J.]