

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

APPEAL FROM ORDER NO.185 OF 2014

Parashram Daulatram Asnani	...Appellant
Versus	
Saswad Heat Transfer and Engineering and Ors.	...Respondents

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Mr.Abhishek Pungaliya for the Appellant.
Mr.Madhav J.Jamdar for the Respondent No.1 and 2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 21st JUNE, 2017.

P.C.:-

1. Heard the learned Counsel for the Appellant and the Respondents. It is seen that relying upon the decision of this Court in *Ketan Industries Pvt.Ltd. and others V/s Manju Ravindrappa,1994 (4) BCR 370*, the learned Judge has held that the Civil Court had no jurisdiction to try the suit. The learned Counsels for the respective parties concede that in the decision in *Yes Bank Limited X Mrs.Madhu Ashok Kapur,1992 (3) BCR 310 (A.O.No.201 of 2014)*, a Division Bench of this Court after considering the decision in *Santsoh Poddar & Another V/s Kamalkumar Poddar & Others* (Supra) has held that the judgment in *Ketan Industries Pvt.Ltd. and others (supra)* was per incuriam and the same is overruled. In view of the subsequent judgments, in *Yes Bank Ltd.(Supra)*, the Learned Counsels both the Counsels for the respective parties submit that the matter should be remanded to the Trial Court with direction to decide the matter afresh,

taking into consideration the subsequent judgment in *Yes Bank Limited X Mrs.Madhu Ashok Kapur (A.O.No.201 of 2014)* as well as amended provision of Company Act 2013.

2. In these circumstances, and in view of the consent of the parties the impugned order is set aside and the matter is remanded to the Trial Court with direction to decide the matter afresh after hearing both the parties, taking into consideration the subsequent judgments of the Division Bench of this Court in *Yes Bank Ltd.(Supra)* (Appeal from Order No.201 of 2014) as well as relevant amended provisions of Companies Act, 2013. It is made clear that this Court has not gone into the merits of the matter and that all points and contentions are kept open.

3. Considering that the suit was filed in the year 2012, the learned Judge shall make endeavour to dispose of the application within a period of two months from the date of the receipt of the order. The learned Counsel for the Respondent has made a statement that he will not proceed with the application pending before the Small Cause Court till the disposal of the application. Statement is accepted.

4. The Appeal from order stands disposed of.

(ANUJA PRABHUDESSAI, J.)