

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1824 OF 2016

Shri Pavan N. Kalekar	..	Petitioner.
v/s.		
Shri Ganpat K. Jagtap	..	Respondent.

Mr. C. S. Joshi, for the Petitioner.

Mr. D. D. Rananaware, for the Respondent.

CORAM: M.S.SANKLECHA, J.

DATE : 21st AUGUST, 2017.

P.C:-

Not on board. Mentioned. Upon mentioning, taken up for consideration.

This Petition under Article 227 of the Constitution of India, challenges the order dated 12th October, 2015 passed by the Civil Judge, Junior Division, Koregaon. By the impugned order, Petitioner's application under Section 9-A of the Code of Civil Procedure, 1908 (Code), seeking to raise a preliminary issue, was rejected.

2 The Respondent has filed suit bearing No. RCS No.167 of 2009, seeking to restrain the Petitioner's from blocking of air and light available to the Petitioner's property. In the above proceeding, the Respondent filed an application for temporary injunction seeking to restrain the Petitioner from carrying on construction as the same would affect the easementary rights of the Respondent from enjoying the natural air and sunlight available to its property. The learned Trial Judge by an order dated 22nd January, 2010 dismissed the Respondent's application for interim injunction.

3 Thereafter, on 16th January, 2015, the Petitioner filed an application under Section 9-A of the Code, seeking to raise preliminary issues with regard to the jurisdiction, relying upon the order dated 22nd January, 2010 passed by the Trial Court, dismissing the interim application of the Respondent.

4 The Trial Court by the impugned order dated 12th October, 2015, rejected the Petitioner's application dated 16th January, 2015 under Section 9-A of the Code. The impugned order records the fact that such an application to frame preliminary issue of jurisdiction, is to be made at the time/ before the interim application is disposed of. The basis of the Petitioner's application under Section 9-A of the Code was the fact that the interim application had been rejected by the order dated 22nd January, 2010 and, therefore, such finding has attained finality. The impugned order further records that there is no mention in the application under Section 9-A of the Code with regard to the reason for absence of jurisdiction with the Trial Court to try the dispute. The only basis being the rejection of an injunction application. The impugned order further records that the rejection of temporary injunction application would not by itself lead to the conclusion that the Court has no jurisdiction to entertain the suit.

5 Mr. Joshi, learned Counsel appearing for the Petitioner states that Trial Court has refused to adjourn the matter and is to proceed with the further hearing tomorrow i.e., 22nd August, 2017. Therefore, the urgency.

6 On merits, Mr. Joshi submits that the impugned order deal with application filed under Section 9 of the Code and not under Section

9-A of the Code. Thus, this order requires interference. I find that the reference to the Section 9 of the Code is on the face of it a typographical error as the impugned order has in fact, reproduced Section 9-A of the Code while dealing with the contentions of the parties. Thus, there is no basis for the challenge on the above ground.

7 Thus, the view taken by the Trial Court in the impugned order is a reasonable view and calls for no interference under Article 227 of the Constitution of India. Accordingly, **Petition dismissed**. No order as to costs.

8 At this stage, Mr. Joshi, learned Counsel appearing for the Petitioner prays for stay of this order. Stay refused.

(M.S.SANKLECHA,J.)