

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

WRIT PETITION NO.1604 OF 2017

Mahindra Hinoday Industries Ltd. ... Petitioner

Vs.

Mrs.Rekha Suhas Joshi & Ors. ... Respondents

Mr.Rohan Sawant with Ms.Manisha Bhangale and Ms.Warisha Parkar for Petitioner

Mr.Siddhartha Ronghe for Respondent Nos.1 and 2

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: MARCH 31, 2017**

P.C. :

1. This Writ Petition is directed against the order dated 9.5.2014 passed by the Civil Judge, Senior Division, Vadgaon-Maval below exhibit 5 in Regular Civil suit No.19 of 2013 and also against the order dated 11.11.2016 passed by the learned Adhoc District Judge I, Pune, in Miscellaneous Civil Appeal No.291 of 2014. The learned Civil Judge, Senior Division, Vadgaon-Maval has granted interim relief in respect of suit property in favour of the original plaintiffs i.e., respondent Nos.1 and 2, and the said order was confirmed by the learned Adhoc District Judge I, Pune. The plaintiffs have filed suit for specific performance of execution of

sale deed dated 26.12.1982 against defendant Nos.1 and 2 as it was agreed between the plaintiffs and the father of defendant Nos.1 and 2. In the said suit for specific performance, the plaintiffs have also prayed for cancellation of registered sale deed of conveyance dated 25.3.1998, which was executed between the original defendant Nos.1 & 2 and defendant No.3 i.e., the petitioner. So also, they asked for lease deed dated 13.9.2014 which was executed between the petitioner and defendant Nos.3 and 4 i.e., respondent No.5 – MSEB; so also, they asked for mandatory injunction that the construction of the substation constructed by MSEB is to be removed. Nandkumar, the father of Defendant Nos.1 and 2 died on 9.12.1986 and thereafter, the defendants have executed registered sale deed in the year 1998 in favour of the petitioner. By way of interim relief, the learned Judge has directed that “the defendants, their servants, agents, power of attorney or anybody on behalf of them are hereby restrained from creating third party interest in the suit property till final disposal of the suit”.

2. During the pendency of the application under exhibit 5 seeking interim relief, the petitioner has moved application under

Order 15 Rule 3 of Code of Civil Procedure raising the point of jurisdiction on the ground of limitation.

3. As per the submissions of the learned Counsel for the petitioner, though the agreement of sale was executed on 26.2.1982 and registered on 4.3.2002, the suit was not filed. It was contended that the plaintiff should have filed suit for specific performance 3 years thereafter. However, he failed to do so and has filed suit for specific performance nearly after 30 to 31 years thereafter, which should have been filed within 3 years and there is a delay of nearly 26 years in filing the suit. Thus, the suit filed by the plaintiff is beyond limitation and so barred. The learned Counsel has further submitted that the plaintiff was aware that the petitioner has executed the registered sale deed in respect of the same property with the original owners i.e., Defendant Nos.1 and 2. he pointed out that a complaint was filed by the plaintiffs in the year 2000 with the Tehsildar objecting to the mutation in favour of the petitioner pursuant to the registered sale deed. He also submitted that in 2007, a private complaint was given against the petitioner and the original defendant Nos.1 and 2 by the plaintiff for fraudulently executing the said registered sale deed. The learned

Counsel has further submitted that the trial Court ought not to have entertained the said suit as it was time barred and the trial Court has no jurisdiction. His main contention was once the issue of jurisdiction was raised by the party, then, it is obligatory on the part of the trial Court to decide that issue without entertaining any application for interim relief.

4. In support of his submissions, he relied on the judgment of the Division Bench of this Court in **Mukund Ltd. vs. Mumbai International Limited and Ors.**¹ He submitted that the trial Court has committed error in entertaining the interim application inter alia and passing order therein. He further relied on the judgment of a learned Single Judge of this Court in the case of **Arjun Dada Gadage vs. Mallappa Gurappa Chougule**². He submitted that in that judgment, this Court has held that once the issue is raised, the provision of section 9A is to be followed. It is mandatory section and if any interim order is passed, the said order is to be set aside and a specific direction that the issue of jurisdiction is to be decided first, is to be given. He further submitted that the provision of section 9A(2) is an exception to section 9A wherein the Court

1 Appeal No.1167 of 2010 in Notice of Motion No.557 of 2010 in Suit No.516 of 2010 decided on 15.2.2011

2 (2003) 4 Mh.L.J. 256

may pass an order of interim relief, if required, while deciding the application raising preliminary issue. However, principally, till the decision of that application of preliminary issue, no other application seeking interim relief can be entertained and decided. In support of this submission, he relied on the judgment of the learned Single Judge in **Prem Bhagwandas Bhagwandasi Harjani vs. Naraindas Vensimal Harjani & Ors.**³ Further, on the point of delay, he relied on the judgment of the Supreme Court in **Mandali Ranganna & Ors. vs. T.Ramachandra & Ors.**⁴ He submitted that if there is delay on the part of the plaintiff then conduct of the party is to be taken into account and no interim relief be granted.

5. Mr.Ronghe, the learned Counsel for the respondents, while assailing the submissions of the learned Counsel for the petitioner, gave chronology of the steps taken before the trial Court and the orders passed by the trial Court. The learned Counsel submitted the ratio laid down in all the rulings is not relevant to the present set of facts as the trial Court has already decided the application raising the issue of jurisdiction on the point of limitation. He

3 2014 (3) Bom. C.R. 518

4 (2008) 11 SCC 1

submitted that his agreement of sale is registered first on time so, the trial Court has given weightage to that aspect while granting interim relief. He further submitted that a suit was filed on 21.12.2012 which is numbered RCS No.19 of 2013 at Vadgaon-Maval Court. He submits that the application for interim relief below exhibit 5 was filed alongwith the suit. The petitioner, the original defendant No.3, filed an application raising objection to the jurisdiction of the trial Court on 23.2.2013. He submitted that the application for interim relief was filed prior to the application raising objection to the jurisdiction. He further submitted that the Counsel for the petitioner on 11.7.2013 made a statement before the Court that the petitioner was not going to part with the property and will maintain status quo. On 3.9.2013, the application was rejected on the ground that the issue of limitation cannot be framed at that stage.

6. Thereafter, on 9.5.2014, the learned trial Judge decided the application below exhibit 5 and granted limited relief. The learned Counsel has further submitted that the petitioner has not moved the application under section 9A of Code of Civil Procedure but under Order 15 Rule 3 of the CPC. The learned Counsel further

submitted that the order granting interim relief to the original plaintiff by the learned trial Judge and so also, the order of confirming the said relief by the learned District Judge are legal and to be maintained.

7. In the present case, the objection is raised on the ground of limitation. It is a settled position of law that in order to avoid further complications and further delay and uncertainty, section 9A of the CPC was inserted by Maharashtra amendment in the year 1977. In the case of **Mukund (supra)** and in the case of **Foreshore Co-operative Housing Society Ltd. vs. Praveen D. Desai**⁵, the Division Bench of this Court held that the ground of limitation is required to be decided as a preliminary issue as it pertains to the jurisdiction of the Court. Under the Limitation Act, the court is precluded from proceeding on merits, if it is barred by the law of limitation. Therefore, it was held that the parties cannot confer jurisdiction by consent to themselves, if suit is beyond limitation. In the case of **Mukund (supra)**, the Division Bench has further laid down a ratio that the Court is under an obligation to decide the question of interim relief and determination of the issue of limitation as a preliminary issue, cannot be postponed to the trial of the suit

⁵ 2009(2) Mh.L.J. 28

and it is to be decided before granting order or setting aside the order of granting interim relief.

8. In the case of **Arjun Dada Gadage (supra)**, the learned Single Judge of this Court by confirming the same view, has further observed that not only before considering the prayer of interim relief but also the other incidental prayers, the Court is obliged to decide the issue of jurisdiction and the learned Single Judge liberally constructed the said provision to meet the legislative intent and the purpose of the enactment. The learned Judge has appropriately held thus:

“.... To put it differently, the essence of the provision is that the issue of jurisdiction should not only be decided at the interlocutory stage but at the threshold, before the Court proceeds with the matter on any other issue; for if it has no jurisdiction to try and entertain the suit as presented, then obviously it should not dwell upon any other matter at all.”

9. Though a mandate to decide the issue of jurisdiction, is very vocal in section 9A and also in the law laid down by the supreme Court and the Division Bench and the learned Single Judge of this Court. Under section 9A(2), the Court is empowered to grant interim relief during the pendency of issue of jurisdiction if urgent

and necessary. So, it was necessary to interpret and explain section 9A(2), which is done by the learned Single Judge of this Court in the case of **Prem Bhagwandas Harjani (supra)**, wherein it is held that when the application for preliminary issue is pending and when it is decided and it is being heard and decided, then in the interregnum, the court is empowered to grant interim relief if it thinks fit. Thus, depending on the facts and circumstances of each case and the nature of relief asked for, the Court may grant interim relief. Thus, the complete bar which was put under section 9A of the Code of Civil Procedure, by way of this exception, has lifted temporarily wherein the court can use its discretion to meet the ends of justice as per the case. The bare reading of the section 9A(2) reveals that with or without such application praying for interim relief, at the time of hearing of the application raising the objection to jurisdiction, the said Court is empowered to grant interim relief. It is obligatory on the part of the trial Court to proceed and decide the application raising jurisdiction of the Court under section 9A first, before deciding the application of interim relief. Section 9A(2) enables the Court to protect the interests of the plaintiff temporarily and thus, it is within the meaning of section 9A and 9A(2), the application for interim relief i.e., under exhibit 5

or in the nature of Notice of Motion may remain untouched and yet, the interim relief can be granted by the Court pending hearing and the decision of the application raising objection to the jurisdiction.

10. In the case of **Mandali Ranganna & Ors. (supra)**, the suit for partition was filed where there was delay. However, in the said case, a huge construction was made by the respondents and the appellants had asked for interim relief that the said construction is to be demolished and it is not to be handed over or third party right to be created. However, it was on the point that the said huge construction cannot be directed to be demolished at that stage, and the respondents have spent huge amounts for construction and therefore, such relief of injunction of putting third parties in possession of the suit property was refused.

11. In the present case, the fact of registered sale deed, *inter se*, between defendant Nos.1, 2 and 3 and the lease deed between the petitioner and the MSEB is not disputed, however, the legality of the same is under challenge by the plaintiff. The chronology of the filing of applications and the chronology given by the learned Counsel for the respondent/original plaintiff, is also not disputed.

The application raising objection to the jurisdiction of the Court was made under Order 15 Rule 3 of the CPC and admittedly not under section 9A of the CPC. However, under the said application, the petitioner had prayed to the Court to decide the issue on the ground of limitation as a preliminary issue. The Court itself cannot usurp the jurisdiction *suo motu* and conversely, the parties cannot confer the jurisdiction to themselves. Undoubtedly, it is necessary for the trial Court to decide the issue of jurisdiction.

12. Curiously, in the present case, on 3.9.2013, the trial Court has decided the said application of raising objection to jurisdiction on the ground of limitation which was made under Order 15 rule 3 of the CPC. The trial Court neither framed the issue of limitation nor it gave finding on the point of limitation while rejecting the said application but the trial Court held that the issue of limitation is a mixed question of facts and law, hence, it cannot be framed and decided as a preliminary issue and hence, the said application made under Order 15 rule 3 was rejected by the trial Court. Had this order not been passed by the trial Court, then the situation would have been different in view of the ratio laid down in the above cases. However, the trial Court has decided may be rightly/

or wrongly and the petitioners have filed a Writ Petition challenging the said order, which is pending before this court and to be pursued by the petitioner independently.

13. Under such circumstances, I am of the view that the order of injunction is passed qua all the defendants that they should not create third party interest in the suit property till final disposal of the suit. It is not the case of the petitioner that the petitioner had constructed some residential complex or commercial complex wherein he has entered into agreement of sale in respect of tenaments with third parties. Thus, when no third party interest is created at the time of passing this order, except construction of substation of MSEB, then, the interim order of injunction is justified, that it will prevent multiplicity of proceedings and will also prevent transfer of the suit property.

14. In the circumstances, I do not find any illegality in the order passed by the learned trial Court and the order passed by the learned District Judge. Writ petition is dismissed.

(MRIDULA BHATKAR, J.)