

(NMS 415 of 2008)

vat

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No. 415 OF 2008

IN

SUIT No. 339 OF 2008

The Church of our Lady of Salvation and
Ors. ...Applicants/Plaintiffs
Vs.
M/s. Motiram Tolaram and Ors. ...Defendants

Mr. Firoz Bharucha a/w. Mr. Ravi Gandhi and Ms. Tanaaz
Padonia i/b. Kanga and Co. for Plaintiff

Mr. Mahesh Menon a/w. Mr. Nilesh Tated and Mr. Rushab Parekh
i/b. M/s. DSK Legal for Defendants

CORAM : K.R. SHRIRAM, J.

DATE : JULY 10, 2017

P.C. :

1. The counsel for the Defendants at the outset, submitted that the suit itself is not maintainable under the provisions of section 50 of the Bombay Public Trust Act, 1950. According to Mr. Menon, counsel for the Defendants, the Plaintiffs have not taken leave of the Charity Commissioner before filing the suit and, hence, suit is not maintainable. This is in addition to the plea, which was taken by the Defendants on which a preliminary issue

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under section 9A of CPC has been framed by this Court. Directions have been passed for filing the documents and affidavits etc. on the issue under section 9A of CPC.

2. Mr. Bharucha, on instructions, states that the copies of these affidavits have been served on the Defendants but not filed in the Registry.

3. After the matter was heard for some time, both Mr. Bharucha for the Plaintiffs and Mr. Menon for the Defendants have agreed that the issue framed under section 9A of the Civil Procedure Code together with the defence taken by the Defendants that the suit itself is not maintainable under the Bombay Public Trust Act, 1950 can be deferred to be heard along with other issues raised in the suit. Both the counsel suggested that the parties have already spent 9 years in this Court and if the evidence will be led under section 9A, then the parties will have to lead further evidence again on other issues if the Plaintiffs succeed. To save time, the counsel suggested that both these issues on limitation and on the maintainability be heard along with the other issues.

4. The counsel also suggested that the ad-interim order granted by this Court on 8th February, 2008 be confirmed as order in this notice of motion and notice of motion be disposed.

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5. The order passed on 8th February, 2008 r/w. Order dated 27th February, 2008 are confirmed as order in this notice of motion. Notice of motion stands disposed.

6. Since the pleadings in this suit are complete, the suit be listed for hearing on 28.7.2017. On the next date, the parties to come with the agreed draft and a separate list of issues on which they are unable to agree.

[K.R. SHRIRAM, J.]

Vaishali Tikam