

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

**NOTICE OF MOTION NO.2050 OF 2011
IN
SUIT NO.2 OF 2009**

Jal Rustom AriaApplicant/Org. Defendant no.1

IN THE MATTER BETWEEN :

Sanjay MunshiPlaintiff

Vs.

Jal Rustom Aria and Ors.Defendants

Mr. Ashwin Shete a/w. Mr. Rahil Jhaveri i/b. M/s. Jayakar and Partners for plaintiff.

Mr. Yuvraj K. Singh i/b. M/s. Desai and Diwanji for defendant no.1/applicant.

Mr. R.S. Kazi i/b. Mr. Sandeep V. Marne for defendant no.2.

CORAM : K.R.SHRIRAM, J.

DATE : 31st AUGUST, 2017

PC.:

1 This notice of motion has been taken out by defendant no.1 for framing an issue under Section 9A of the Code of Civil Procedure to decide whether the suit is barred by limitation.

2 Section 9A of the Code of Civil Procedure reads as under :

“9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.- (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such

application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in Sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to jurisdiction." - Maharashtra Act (65 of 1977) (w.e.f. 19-12-1977).

3 The interim application taken out by plaintiff being notice of motion no.531 of 2009 itself has been dismissed. Therefore, as no application relating to interim relief in the suit of plaintiff is pending, the question of framing any issue under Section 9A does not arise. It should also be noted that in the issues settled on 25th March, 2015 the issue of limitation has also been included.

4 Mr. Shete, counsel for plaintiff states that plaintiff has preferred an appeal against the dismissal of the notice of motion which is still pending. Certainly, if the Appeal Court is inclined to allow the appeal, it will be open for defendant no.1 to request the Appeal Court to frame an issue under Section 9A.

5 Therefore, this notice of motion does not survive and accordingly stands disposed.

6 Mr. Shete, counsel for plaintiff states that he has been informed that defendant no.2 has expired about a month ago but does not

have details. Mr. Shete requests the matter be placed for directions after three weeks so that he will be able to collect the details in the meanwhile.

7 Suit be listed on 22nd September, 2017 for directions.

(K.R. SHRIRAM, J.)