

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

**APPEAL NO.437 OF 2014
IN
REVIEW PETITION (L) NO.26 OF 2014
IN
NOTICE OF MOTION NO.2435 OF 2014
IN
SUIT NO.1978 OF 2014**

Sajid Ismail Haji Noor Mahmmed Appellant
versus
Sohail Haji Noor Mohammed and Ors. ... Respondents
.....

- Mr.Behl i/b. Sonal Doshi, Advocate for the Appellant.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 21st NOVEMBER, 2017.**

P.C. :

1. The above Appeal takes exception to the order dated 22/08/2013 passed by a learned Single Judge of this Court. By the said order the above Review Petition, as also Notice of Motion came to be disposed of, in view of the consent given by the parties. The Defendant No.2 has filed the instant Appeal aggrieved by the disposal of the Notice of Motion as well as the Review Petition.

2. It is the contention of the Defendant No.2 as urged by the learned counsel Mr.Behl that the Notice of Motion could not have been disposed of in view of the pendency of the Application u/s 9-A of the Civil Procedure Code, questioning the jurisdiction of this Court on the ground of limitation. A reading of the said order dated 22/08/2013 discloses that the parties had agreed to go for mediation and therefore the learned Single Judge with the hope that the parties would settle the dispute through mediation, recorded the consent of the Plaintiffs as well as the Defendants for disposal of the Notice of Motion filed by the Plaintiffs for interim reliefs pending the suit.

3. The fact that the mediation has failed is a factor which has taken place after the order dated 22/08/2013 and it could not have been envisaged or contemplated at the time when the said order dated 22/08/2013 was passed. Since the disposal of the Notice of Motion is by consent of the parties, this Court obviously cannot interfere with the said order in so far as the

disposal of the Notice of Motion is concerned. However, taking note of the fact that the dispute could not be settled and therefore the suit would have to be prosecuted by the parties. In our view, interest of justice would be served if the application u/s 9-A filed by the Defendant No.2 as also the suit in question, is decided uninfluenced by the fact that both, the above Notice of Motion and the Review Petition were disposed of by consent of the parties. With the aforesaid observations, the Appeal is disposed of.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)