IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 28 OF 2018
IN
WRIT PETITION NO. 1503 OF 2015

Rajabhau Digambarrao Jabde,
Through General Power of Attorney Holder
Dr. Ankush Rajabhau Jabde .. **Applicant**
Versus
Rahul Arunrao Tak and others .. **Respondents**

Mr. Shambhuraje V. Deshmukh, Advocate for the Applicant.
Mr. Rajendra Deshmukh, Advocate for Respondent No. 3.

CORAM: S. V. GANGAPURWALA, J.
DATE: 16th August, 2018

PER COURT :

1. Mr. Deshmukh, the learned counsel seeks review of the order passed by this Court on 14.12.2017, thereby rejecting the application of the petitioner.

2. The learned counsel submits that this Court passed the judgment under review relying upon the judgment of the Apex Court in a case of **Foreshore Co-operative Housing Society Ltd. Vs. Praveen D. Desai and others** reported in (**2015) 6 SCC 412**. The learned counsel submits that subsequently the Apex Court in a case of **Jagdish Shyamrao Thorve**

Vs. Mohan Sitaram Dravid and others passed order in Special Leave Petition (C) No. 22438 of 2015 observing that the earlier judgment of the Apex Court in a case of **Kamalakar Eknath Salunkhe Vs. Baburav Vishnu Javalkar** reported in **(2015) 3 SCALE 34** was not considered and had again referred the matter to the larger Bench. The learned counsel further submits that now Section 9-A of the Code of Civil Procedure, as amended by the Maharashtra Amendment Act, 1977 is deleted from the Civil Procedure Code by virtue of the Ordinance dated 27.06.2018.

3. We have heard the learned counsel for the respondent also.

4. Now Section 9-A of the Civil Procedure Code stands deleted from the statute book, however, the Courts still have powers under order 14 Rule 2 of the Code of Civil Procedure and in appropriate cases may frame preliminary issue. As far as valuation is concerned it will be appropriate to frame the issue as preliminary issue because at this stage if the Court comes to the conclusion that the court does not have the pecuniary jurisdiction then the plaint can be returned for presentation in proper Court. The procedure laid down under the Suits Valuation Act, 1887 read with the provisions of the Bombay Court Fees Act, 1959

will have to be followed.

5. Considering the judgment of the Apex Court in a case of **Kamalakar Eknath Salunkhe Vs. Baburav Vishnu Javalkar** and subsequent order of the Apex Court in a case of **Jagdish Shyamrao Thorve Vs. Mohan Sitaram Dravid and others** referring the matter to the larger Bench, the order under review to the extent of framing the issue of limitation as a preliminary issue is recalled. The issue of limitation shall be tried alongwith all other issues in the main proceedings. The Court will frame issue of jurisdiction qua the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the valuation as a preliminary issue and try both these issues first. The issue of valuation should be tried as observed (supra). None the less, the Trial Court shall decide these issues on the basis of the evidence led by the parties.

6. With these observations the review application is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

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