

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.130 OF 2018

Kachru Devram Vahadane & ors.

Petitioners

VERSUS

State of Maharashtra & ors.

Respondents

...

Mr. S.S. Kulkarni, Advocate for the petitioners

Mr. K.S. Patil, AGP for the respondent No.1

Mr. A.D. Shinde, Advocate for the respondent No.4

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 29th OCTOBER, 2018

PER COURT :

1 I have heard the learned Advocates for the respective sides.

2 Learned counsel for respondent No.4 submits that, in view of the Maharashtra amendment introduced on 27.06.2018 by the Ordinance No.XVIII of 2018, objections under Section 9A of the CPC can no longer be entertained as Section 9A by way of the Maharashtra amendment has been deleted from the CPC.

3 Clause 3 under the Code of Civil Procedure (Maharashtra Amendment) Ordinance 2018 reads as under :-

“3. Notwithstanding the deletion of section 9A of the principal Act -

(1) where consideration of a preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018 (hereinafter, in this section, referred to as “the Amendment Ordinance”), the said issue shall be deemed to be an issue framed under Order XIV of the principal Act and shall be decided by the Court, as it deems fit, along with all other issues, at the time of final disposal of the suit itself :

Provided that, the evidence, if any, led by any party or parties to the suit, on the preliminary issue so framed under section 9A, shall be considered by the Court along with evidence, if any, led on other issues in the suit, at the time of final disposal of the suit itself :

(2) in all the cases, where a preliminary issue framed under section 9A has been decided, holding that the Court has jurisdiction to entertain the suit, and a challenge to such decision is pending before a revisional Court, on the date of commencement of the Amendment Ordinance, such revisional proceedings shall stand abated :

Provided that, where a decree in such suit is appealed from any error, defect or irregularity in the order upholding jurisdiction shall be treated as one of the ground of objection in the memorandum of appeal as if it had been included in such memorandum ;

(3) in all cases, where a preliminary issue framed under section 9A has been decided, holding that the Court has no jurisdiction to entertain the suit, and a challenge to such decision is pending before an appellate or revisional Court, on the date of commencement of the Amendment Ordinance, such appellate or revisional proceedings shall continue as if the Amendment Ordinance has not been enacted and Section 9A has not been deleted :

Provided that, in case the appellate or revisional Court, while partly allowing such appeal or revision, remands the matter to the trial Court for reconsideration of the preliminary issue so framed under section 9A, upon receipt of these proceedings by the trial Court, all the provisions of the principal Act shall apply :

(4) in all cases, where an order granting an ad-interim relief has been passed under sub-section (3) of section 9A prior to its deletion, such order shall be deemed to be an ad-interim order made under Order XXXIX of the principal Act and the Court shall, at the time of deciding the

application in which such an order is made, either confirm or vacate or modify such order.”

4 It is, therefore, submitted that the impugned order concluding that the Trial Court has jurisdiction to entertain R.C.S. No.22/2018, can be set aside and liberty can be granted to the petitioner. The learned Advocate for the plaintiffs submits that the impugned order dated 11.04.2018 will have to be sustained and if there is any further objection being raised by the petitioner, the same could be entertained under Order XIV Rule 2 of the CPC.

5 Learned Advocates for the respective sides jointly submit that their respective contentions with regard to even objections to be considered under Order XIV Rule 2, may be kept open in the Trial Court to consider the same.

6 In view of the above, this petition is disposed of with liberty to the defendants to raise objections under Order XIV Rule 2 of CPC. Keeping in view the amendment introduced on 27.06.2018, any such objection would be dealt with along with all other issues while deciding the suit.

[RAVINDRA V. GHUGE, J.]

Donge/-