

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11081 OF 2017

(Jalgaon District Central Co-operative Bank Ltd., Jalgaon Vs.
Mahavir Urban Co-operative Credit Society Ltd., Jalgaon and others)

Mr.D.P.Munde, Advocate for the petitioner.

Mr.A.P.Bhandari, Advocate for respondent No.5.

Mr.A.D.Shinde, Advocate for respondent Nos.2, 3, 4, 6, 7, 8, 9, 10 and
11.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 16/07/2018

PER COURT :

1. The petitioner / original disputant is aggrieved by the order dated 03/12/2016, by which the Co-operative Court has framed a preliminary issue u/s 9-A (Maharashtra Amendment) of the CPC and has directed the parties to commence recording of oral and documentary evidence on the said issue which pertains to the bar of limitation. The petitioner is also aggrieved by the judgment of the Co-operative Appellate Court dated 12/07/2017 by which its Revision Petition No.19/2017 has been dismissed.

2. The grievance of the petitioner is that the Co-operative Court could not have ordered a trial on the issue of limitation as a preliminary issue. The said issue could have been dealt with

alongwith all other issues.

3. Learned Advocate for respondent No.5 has strenuously opposed this petition by contending that the Trial Court has passed a discretionary order and unless discretion exercised would cause gross injustice to any litigant, keeping in view the judgments of the Apex Court in the matter of Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682], no interference is called for merely because a second view could possibly be taken.

4. It requires no debate that whether an issue should be dealt with as a preliminary issue, can be left to the discretion of the Court and if it is a mixed question of facts and law, the parties could be permitted to lead evidence as has rightly been done by both the Courts below. However, it needs to be noted, since it would impact the result in this petition, that the State of Maharashtra has introduced the Ordinance No.XVIII of 2018 which is an amendment to the CPC on 27/06/2018, by which Section 9-A has been deleted and all objections pertaining to the issues of limitation and jurisdiction of the Court are to be dealt with finally alongwith other issues.

5. 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 (2) 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.”

6. In view of the above, clause 3(1) of the Amendment would squarely apply to this case, as though the issue has been framed u/s 9-A, recording of evidence has not commenced and as such, the said issue could be dealt with as an issue under Order 14 of the CPC, to be tried alongwith all other issues. The contention of Mr.Bhandari

that this petition be dismissed with costs, therefore, cannot be accepted.

7. In view of the above, this petition is partly allowed purely on account of the amendment dated 27/06/2018. The preliminary issue framed by the Co-operative Court shall be dealt with alongwith all other issues.

8. Since the dispute is of the year 2010, the Co-operative Court shall make an endeavour to decide the same expeditiously and preferably on or before 31/07/2019. All contentions of the litigating sides are kept open.

(Ravindra V.Ghuge, J.)