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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION STAMP NO.35338 OF 2017

Sayyed Amatul Latifa Shaikh Zafar
Pasha.

...Applicant..

Versus

Shaikh Jaker Shaikh Maheboob
and another.

...Respondents..

.....

Shri Prasad Jarare h/f Shri S.S.Thombre, Advocate for
applicant.

Shri M.M.Patil (Beedkar), Advocate for respondent No.1.
Respondent no.2 served.

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CORAM: M.S.SONAK, J.

DATE: 17.01.2018.

ORDER :

- 1] Heard learned counsel appearing for the parties.
- 2] Learned counsel for the applicant submits that in terms of Section 9-A of the Code of Civil Procedure, which is applicable in the State of Maharashtra, once the preliminary objection is raised to the maintainability of the suit, the learned trial Judge is obliged to frame a preliminary issue and decide the same even before taking up the application seeking interim relief. He submits

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that in the present case, the learned trial Judge has refused to frame any preliminary issue, but ordered that this issue can be considered alongwith the remaining issues, which will arise in the suit. The learned counsel for the applicant submits that this is a clear case of failure to exercise jurisdiction and, therefore, the impugned order deserves to be revised u/s 115 of the Code of Civil Procedure.

3] Learned counsel for the respondent no.1 i.e. original plaintiff points out that the only preliminary objection raised by the applicant was that the civil Court lacks jurisdiction to entertain the suit because the suit has been valued for the purposes of Court fees in an amount exceeding rupees one crore. He points out that the pecuniary jurisdiction of the Civil Judge, Senior Division to entertain a suit of this nature is unlimited and, therefore, the preliminary objection, as raised, was quite frivolous and was in fact required to be rejected at the outset.

4] There appears to be merit in the contentions of both the learned counsel. The learned counsel for the applicant is right in submitting that the procedure

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adopted by the learned trial Judge in postponing the very framing of preliminary issue or its adjudication alongwith all the other issues, which might arise in the suit, is incorrect. Normally, when a preliminary objection is raised and Section 9-A of the Code of Civil Procedure is invoked, the trial Court is obliged to frame a preliminary issue and to decide the same before any other issues are framed or taken up for consideration. If the situation so requires, the trial Court can always protect the plaintiff by grant of ad-interim relief in terms of Section 9-A(2) of the Code of Civil Procedure. However, framing of such issue or adjudication thereof cannot be postponed.

5] However, learned counsel for the respondent no.1 is also entirely right in his submission that even if a preliminary issue as to jurisdiction were to be framed in this matter, the same would have to be decided against the applicant because the pecuniary jurisdiction of the Civil Judge, Senior Division is unlimited. There is no serious dispute that the pecuniary jurisdiction of the learned Civil Judge, Senior Division, is unlimited and, therefore, even if the suit were to be valued for

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purposes of Court fees and jurisdiction in an amount exceeding rupees one crore, there was no jurisdictional bar to its entertainment by the Court of learned Civil Judge, Senior Division.

6] Therefore, no useful purpose would be served by interfering with the impugned order and directing the civil Court to frame a preliminary issue and then formally answer the same in favour of the plaintiff – respondent no.1.

7] Taking into consideration the aforesaid position, the civil revision application is dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)