

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

WRIT PETITION NO.5565 OF 2017

SHRIKANT VIRCHAND JAIN
VERSUS
SUBHASH VIRCHAND JAIN AND OTHERS

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Advocate for the Petitioner : Shri Shaikh Ashraf Patel h/f Shri Avhad
Abhijeet P..

Advocate for Respondents 1 and 2 : Shri A.A.Yadkikar.
AGP for Respondent 14 : Shri S.R.Yadav.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th December, 2018

Per Court:

1 I have heard the learned Advocates for the respective sides and have perused the earlier order passed by this Court (Coram : M.S.Sanklecha, J.) dated 02.05.2017.

2 Issue is that the application made by the Petitioner/ original Defendant in Special Civil Suit No.60/2015 at Exhibit 54, has been rejected. The prayer set out in Exhibit 54 was concerned with the maintainability of the suit and hence, it was canvassed that an issue under Section 9-A (Maharashtra Amendment) of the Code of Civil Procedure be framed. Exhibit 54 was rejected.

3 The Law and Judiciary Department of the State of Maharashtra has introduced the Maharashtra Ordinance No.XVIII of 2018 on 27.06.2018 by which, the Section 9-A (Maharashtra Amendment) has been deleted considering the law laid down by the Honourable Supreme Court in *Foreshore Co-operative Housing Society vs. Praveen D. Desai, (2015) 6 SCC 412*. It is now provided that any objection as regards the maintainability of the suit would be considered under Order 14 Rule 2 of the Code of Civil Procedure and such an issue would be considered along with all other issues.

4 The learned Advocate for Respondent Nos.1 and 2 submits, on instructions, that the issues in the suit are yet to be framed and considering the pleadings of the parties, if the Court finds that any averment involves the issue of jurisdiction, it may consider the framing of such an issue.

5 In view of the above and as the impugned order is rendered inoperative in view of the said Maharashtra Ordinance, this Writ Petition is allowed and Exhibit 54 stands disposed of since the Trial Court is yet to cast issues.

6 However, if the Trial Court considers any issue pertaining to the jurisdiction of the court or the tenability of the suit, it may frame such an issue, which may be treated as an issue under Order 14 Rule 2, to be considered along with the other issues. In the event, such an issue is not

cast, the Defendants would then be at liberty to make an application, which the Trial Court would consider on its own merits.

kps

(RAVINDRA V. GHUGE, J.)