

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2835 OF 2018

1.Ajit Giridharilal Nahar & Anr. ...Petitioners
Versus

1.Mrs.Artee Mukund Chaphekar & Ors. ...Respondents

Mr.Surel Shah, for the Petitioners.

Mr.Chiffort Martis with Mr.Jonathan and S.Pathak, for Respondent no.1

CORAM : G.S.KULKARNI, J.

DATE : 24th September, 2018

P.C. :

1. None for the petitioners when called out.
2. This petition challenges the order dated 24 October 2017 passed by the learned 6th Jt.Civil Judge, Senior Division, Pune, whereby the application as filed on behalf of the petitioners/defendant nos.3 and 4 interalia under Section 9A of the Code of Civil Procedure for framing preliminary issue on jurisdiction, stands rejected.
3. Section 9A of the Code of Civil Procedure has been deleted by a recent amendment to the Code of Civil Procedure as made by Maharashtra Ordinance No.XVIII of 2018, dated 27th June 2018. In view of this statutory position, the writ petition would abate. This was also observed in the earlier order dated 29 August 2018 passed by this

Court. The Court however recorded a submission made on behalf of the petitioners that insofar as the application under Order 7 Rule 11(d) of the Code of Civil Procedure is concerned, the petitioner may be granted leave to file a fresh application under the said provision, in the pending suit. In paragraph 2 of the said order the Court observed thus:-

“2. Mr.Shah, learned counsel for the petitioners stated that in view of the deletion of Section 9A of the Code of Civil Procedure, 1908, insofar as his application under section 9A of the Code of Civil Procedure, 1908 is concerned, writ petition stands abated. He however submits that insofar as application under Order 7 Rule 11(d) is concerned, he may be granted leave to file a fresh application under the said provision before the learned trial judge in the pending suit. Statement is accepted.”

4. Respondent no.1/plaintiff is now represented by Mr.Chiffort Martis who on instructions of his client present in the Court states that his client has no objection, if the petitioners file application under Order 7 Rule 11(d) of the Code of Civil Procedure in the pending suit. He submits that all contentions of the respondents be expressly kept open.

5. In these circumstances the adjudication of this petition is not called for. The petition is disposed of by permitting the petitioners to move an application, if they so desire, under Order 7 Rule 11(d) of CPC in the pending suit. All contentions of the parties on the merits of the matter are expressly kept open.

6. Mr.Shah, learned Counsel for the petitioners submits that an application under Order 7 Rule 11(d) of CPC would be filed by the petitioners within one week from today.

7. Needless to observe that if such an application is made, that shall be decided on its own merit without being influenced by the impugned order.

8. The petitioners are also at liberty to request the learned trial Judge to take up the hearing of the said application at an early date.

9. Writ petition is accordingly disposed of. No costs.

(G.S.KULKARNI, J.)

Prashant
Vilas Rane

Digitally signed by
Prashant Vilas Rane
Date: 2018.09.25
19:03:10 +0530