

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION ST. NO. 8524 OF 2018
IN
APPEAL FROM ORDER NO. 795 OF 2017**

Nandkumar Parshuram Juvekar & Anr.

...Petitioners

Versus

Virendra Vasant Kapdi & Ors.

...Respondents

.....

Mr.Vijay S. Kurle for the Petitioners.

Mr. Simil Purohit a/w. Ms. Naveri Reshamwalla I/b. Wadia Ghandy &
Co. for Respondent Nos. 3,4,7 and 8.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: AUGUST 01, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Review Petition is filed against the order dated 4th December, 2017 passed by this Court in Appeal from Order No. 795 of 2017 in which the order dated 13th July, 2017 passed by the learned Judge, City Civil Court, Gr. Bombay in Notice of Motion No. 2910 of 2016 in S.C.Suit No. 4939 of 2003 is stayed.
3. After hearing the submissions of both the parties and going through the records, it is found that this Court by order dated 4th

December, 2017 has passed the following order :-

- “(i) The trial Court to proceed with the matter and decide the issue under Section 9A of the CPC on or before 30th January, 2018. Parties to cooperate the trial Court*
- (ii) Parties to appear before the trial Court*
- (iii) The order of the trial Court rejecting the ad-interim relief is maintained, however, the order of imposing the costs of Rs. 2000/- on each of defendant nos. 2 to 4 is set aside”.*

4. It is informed by the learned Counsel for the respondents that the learned Judge of the trial Court has decided the issue under Section 9A of the Code of Civil Procedure on 1st February, 2018.

5. The learned Counsel for the petitioners admitted that he has filed this Review Petition inadvertently, but he should have separately challenged the order of interim injunction, which was granted in Notice of Motion No. 2910 of 2016.

6. In reply, the learned Counsel for the respondents submits that the trial Court has passed the order under Section 9A of the CPC in favour of the present petitioners. The said Notice of Motion is pending for hearing.

7. The petitioners should have taken out a separate proceeding challenging ;

i) Interim order or

ii) He should have approached the City Civil Court for final disposal of the order passed in Notice of Motion No. 2910 of 2016, which is pending for final hearing. He should have moved an application before the City Civil Court for disposal of the said Notice of Motion, as it is pending since 2016. However, he has filed the Review Petition before this Court, which does not come within the ambit of Order 47 and Section 114 of the Code of Civil Procedure.

8. The learned Judge of the City Civil Court, Gr. Bombay to expedite, hear and conclude the Notice of Motion No. 2910 of 2016 till 15th October, 2018. Parties to co-operate.

9. With this, Review Petition is disposed of.

(MRIDULA BHATKAR, J.)