

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1183 OF 2017

IN

WRIT PETITION NO. 8755 OF 2015

Cornell Housing Infrastructure Pvt Ltd ..Applicant

IN THE MATTER BETWEEN

Cornell Housing Infrastructure

Pvt Ltd

.Applicant/Petitioner

Vs.

Shri Kailash P. Shah and Others

..Respondents

Mr.Pravin K. Samdani, Senior Advocate a/w Mr. Karl Tamboly, Mr. Nitesh Ranavat, Ms. Tanvi Shah, Ms Disha Shetty i/b Wadia Ghandy and Co, for the Applicant/ Petitioner.

Mr. Zal Andhyarujina a/w Ms. Akanksha Agarwal, Mr. Rubin Vakil, Mr. Benny Joseph, Mr. Aniruddha Lad, Ms Pallavi Kamath, Mr. Bijju Joseph i/b B. J. Law Officer's LLP, for Respondent nos. 1 to 7, 9 to 13, 16, 17,24,28 and 33.

CORAM :- B.P.COLABAWALLA, J.

DATE :- DECEMBER 7, 2018.

P. C.:

This Civil Application has been filed in Writ Petition No. 8755 of 2015 which was disposed of by this Court on 9th

September, 2015. This Court, by its order dated 9th September, 2015 recorded the concession made by the learned Senior Counsel appearing on behalf of the Petitioner that the Petitioner would be satisfied if the issue of limitation as framed under Section 9A of the CPC is decided in a time-bound programme. In these circumstances, this Court directed the Trial Court to hear and decide the preliminary issue under Section 9A latest by 31st December, 2015 by giving a proper opportunity to the parties. It was further clarified that the order impugned in the Writ Petition, namely the ad-interim injunction granted pending the determination of the Section 9A issue, was to continue till the said preliminary issue was decided by the Trial Court.

2 It appears that till date the said issue has not been decided and in fact now Section 9A has been repealed by Maharashtra Act No. LXI of 2018. Section 3 (1) of the Repeal Act clearly stipulates that 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 (now replaced by the Act), the said issue shall be deemed to be an issue framed under Order XIV of the

Code of Civil Procedure, 1908 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. Section 3 (4) further stipulates that in all cases, where an order granting 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 C.P.C. 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.

3 Considering that Section 9A has now been repealed, there is no impediment for the Trial Court to decide Exhibit-5 filed by the Plaintiff before the Trial Court finally.

4 Considering that this ad-interim relief has been operating since the year 2015, the Trial Court is directed to hear and finally decide Exhibit-5 within a period of four weeks from today.

5 The Civil Application is disposed of in the aforesaid terms.

(B. P. COLABAWALLA, J.)