

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7449 OF 2018

Kamlakar Shantaram Mathe @ Gajanan
Shantaram Mathe and others ... Petitioners
Vs.
The State of Maharashtra and others ... Respondents

Ms Ratna R. Jaiswal for Petitioners.
Mr. Jaydeep Deo for Respondents No.2 and 3.

CORAM : R. G. KETKAR, J.
DATE : JULY 16, 2018

P.C. :

Not on Board. At the request of Ms Jaiswal, taken up for admission.

2. Heard Ms Jaiswal, learned Counsel for the petitioners and Mr. Deo, learned Counsel for the respondents No.2 and 3 at length.

3. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants' have challenged the order dated 16.01.2018 passed by the learned Judge, Court Room No.20 of the Court of Small Causes at Bombay below exhibit-48 in R.A.E.Suit No.270/384 of 2006. By that order, the learned trial Judge rejected the application made by the defendants for framing preliminary issue under Section 9-A of the Code of Civil Procedure, 1908 (for short 'C.P.C.'). In paragraph 6 of the order, the learned trial Judge observed that Section 9-A of C.P.C. can be invoked only when interim application is pending. No interim application is pending and the issues are already framed. At that stage, application under Section 9-A is moved which is not tenable. The learned trial Judge further observed that if the plaintiff fails to prove that he is a landlord and that defendant is not his tenant, Suit of plaintiff

will fail. Thus, the learned trial Judge rejected the application on the ground that application under Section 9-A is not maintainable as interim application is not pending. That apart, in view of the deletion of Section 9-A by Ordinance, even otherwise, I do not find that the learned trial Judge has committed any error in rejecting the application. Liberty is reserved to the defendants to take out appropriate proceedings for framing additional issue based on the contentions raised in application under Section 9-A , if such issue is not already framed. Subject to this, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab

Minal Sandip
Parab

Digitally signed by Minal
Sandip Parab
Date: 2018.07.17
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