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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (St.) No. 14294 OF 2018
WITH
CIVIL APPLICATION (St.) No. 14296 OF 2018

Kishor Kirtilal Mehta ... Appellant
Vs.
M/s. Phoenix Arc. Pvt. Ltd. & Ors. ... Respondents

Mr. Bhupesh Dhumatkar a/w Jayesh G. Gawde, for the
Appellant.

Mr. Rohit Gupta a/w Nikhil Rajani, Ms. Jyoti Sanap i/b V.
Deshpande, for the Respondent No. 1.

CORAM : V. M. DESHPANDE, J.

DATE : JUNE 28, 2018

PC :-

1 Heard learned counsel for the appellant and for the
respondent No.1. For the decision of the present appeal,
presence of other respondent is not necessary .

2. Present appeal is filed by original plaintiff against the
order dated 3/5/2018 of which operative portion of the said

order is as under:

1. Preliminary issue as regards jurisdiction of this court to try and entertain present suit is framed.
2. Parties are directed to lead evidence, if any, on preliminary issue.
3. Till the decision on preliminary issue hearing on notice of motion no.1761 of 2018 is kept pending.
4. Request of granting protection contemplated under section 9A(2) of CPC is hereby rejected.

3. The appeal which is carried before this Court against said order was taken up by this Court on 4.5.2018 on mentioning from the appellant/plaintiff for ad-interim relief. This Court on the said day rejected the prayer of ad-interim relief. It is informed by the learned counsel for the respondent that against the order passed by this Court rejecting the ad-interim relief, plaintiff has approached the Hon'ble Apex Court by filing Special Leave to Appeal (C) No. 13613 of 2018 and the Hon'ble Apex Court on 31.5.2018 has rejected the said SLP. In fact, the photo copy of the said order is handed over to this Court by the learned counsel for the Respondent which is taken

on record and marked 'X' for identification.

4. After hearing the parties to the appeal, interest of justice can be achieved by passing following order:

- (i) Appeal is disposed of maintaining the impugned order dated 3.5.2018.
- (ii) The Trial Court is directed to decide preliminary issue of jurisdiction as early as possible, preferably within 10 weeks from today by giving opportunity to both the parties to lead evidence as observed by the Trial Court in the impugned order.
- (iii) No order as to costs. Needless to state that all pending Civil Applications filed in the appeal are disposed of.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath