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

**CIVIL APPLICATION (STAMP) NO. 19863 OF 2018
IN
APPEAL FROM ORDER NO. 354 OF 2018**

Mr. Kishor Kirtilal Mehta .. Applicant
Vs.
M/s. Phoenix ARC Pvt. Ltd. & Ors. .. Respondents

Mr. Bhupesh Dhumatkar i/b Mr. Jayesh Gopal Gawde for the Applicant.
Mr. Rohit Gupta a/w. Mr. Nikhil Rajani i/b M/s. V. Deshpande & Co. for the
Respondent No.1.

CORAM : K. K. SONAWANE, J.
DATE : 23rd JULY, 2018.

P. C. :

1. Heard learned Counsel for the applicant and respondent. Perused the Civil Application.
2. The applicant moved the present application seeking modification of earlier order passed by this Court dated 28.06.2018 in regard to the directions pertains to the preliminary issue to be decided prior to further hearing of the Notice of Motion No. 1761 of 2018.
3. Admittedly, in view of subsequent developments in regard to the provisions of Section 9A of the Code of Civil Procedure, the remedy for claiming the preliminary issue in regard to the jurisdiction of the Court to try and entertain the dispute on merits is not available for applicant. Therefore, in view of deletion of Section 9A of the Code of Civil Procedure, there would not be any propriety to issue direction to the Trial Court to

decide the preliminary issue of jurisdiction prior to the hearing of Notice of Motion No. 1761 of 2018. In such circumstances, the order passed by this Court dated 28.06.2018 deserves to be modified.

4. Accordingly, the Civil Application stands allowed. The directions issued by this Court under Order dated 28.06.2018 while disposing of Appeal from Order stand modified and substituted as under.

5. The Trial Court shall proceed with the hearing of Notice of Motion No. 1761 of 2018 after hearing both the parties on merits and adjudicate the same expeditiously, more particularly within a period of eight weeks from today.

6. All the legal issues of the parties are kept open.

7. The Civil Application is disposed of in above terms.

8. Meanwhile, the impugned order passed by the learned Trial Court dated 03.05.2018 shall remain in force till the adjudication of Notice of Motion No. 1761 of 2018 on merits within the stipulated time.

[K. K. SONAWANE, J.]