

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 9575 OF 2018****Tha Mahanagar Co-operative Bank Ltd. Petitioner****VERSUS****Sunil Ramas Patil Respondent**

Mr.A.S.Khandeparkar, a/w. Mr.Sarwankar, i/b. Sarwankar & CO. for the Petitioner.

None for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 3rd SEPTEMBER, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner (original defendant no.1) has applied for framing a preliminary issue under section 9A of the Code of Civil Procedure, 1908 which issue was framed by the learned trial judge. The petitioner however applied for directions against the parties to argue the said preliminary issue. The learned trial judge has rejected the said application by an order dated 10th November, 2017.

2. In view of the deletion of section 9A of the Code of Civil Procedure, 1908, the learned trial judge was not required to proceed with the said preliminary issue as the same would be considered along with other issues under Order 14 Rule 2 of the Code of Civil Procedure, 1908. I do not find any infirmity in the impugned order passed by the learned trial judge rejecting the application filed by the defendant no.1 to direct the parties to argue the said issue finally.

3. In view of the fact that section 9A issue has to be tried as issue under Order 14 Rule 2, there is no bar against the trial court to proceed with the interlocutory application.

4. Ex.5 application shall be disposed of by the learned trial judge expeditiously.

5. Both the parties shall co-operate with each other and with the learned trial judge in disposing of the said Ex.5 application expeditiously and not later than three months from the date of copy of this order is made available before the learned trial judge.

6. The petitioner is directed to convey this order to the respondent.

7. The parties as well as the learned trial judge to act on the authenticated copy of this order.

8. Writ petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]