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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.398 OF 2015

Shri Datta Nagari Sahakari Pat
Sanstha Maryadit (Chinchwad) & Anr. ...Applicants

V/s.
Shivtara Garden Sahakari Griha
Rachana Sanstha Maryadit & Ors. ...Respondents

Mr.Pradeep Dalvi for the Applicants.

Mr.S.S. Kanetkar for the Respondent Nos.1 and 2.

CORAM : R.D. DHANUKA, J.
DATE : 26TH SEPTEMBER, 2018

P.C. :-

1. Mr.Kanetkar, learned counsel appearing for the respondents raises a preliminary issue of maintainability of this civil revision application filed under section 115 of the Code of Civil Procedure, 1908 on the ground that in view of the Ordinance issued by the State Government on 27th June, 2018 thereby deleting section 9-A of the Code of Civil Procedure, 1908 (for short "CPC"), this civil revision application stands abated.

2. Mr.Dalvi, learned counsel appearing for the applicants on the other hand invited my attention to the application filed by his client annexed at Exhibit – C to the civil revision application and would submit that the applicants had raised an issue that the suit is not

maintainable in view of non-compliance of the provisions of sections 163 and 164 of the Maharashtra Co-operative Societies Act, 1960 (for short "the MCS Act"). He submits that the said application was filed under section 9 of the CPC read with sections 163 and 164 of the MCS Act and not under section 9-A of CPC and thus though the learned Trial Judge has rejected the said application and has held that the learned Trial Court has jurisdiction to try and decide the suit filed by the respondents, this civil revision application would not stand abated. He submits that the Ordinance dated 27th June, 2018 thus would not apply to the facts of this case.

3. A perusal of the application annexed at Exhibit-C indicates that the applicants have raised an issue of jurisdiction and had requested the learned Trial Judge to frame a preliminary issue as to whether the learned Trial Court has jurisdiction to entertain the said suit or not. By an order dated 18th March, 2014, the learned Trial Judge has rejected the said application and has rendered a finding that the learned Trial Court has jurisdiction to try and decide the said suit.

4. In my view, even if an issue was raised by the applicants that the suit was not maintainable in view of the alleged non-compliance of sections 163 and 164 of the MCS Act, the application for framing a preliminary issue raising an issue of jurisdiction could be filed only under section 9-A of CPC. There is no provision for filing an

application for framing a preliminary issue of jurisdiction either under section 163 or 164 of the MCS Act or under section 9 of the CPC. A perusal of para 9 of the civil revision application clearly indicates that the applicants have also rightly understood that the said application annexed at Exhibit-C was under section 9-A of the CPC. In my view, the Ordinance dated 27th June, 2018 and more particularly section 3(2) would clearly stand attracted to the facts of this case. The issue of jurisdiction has been already decided by the learned Trial Court by an order dated 18th March, 2014.

4. The civil revision application thus stands abated. There shall be no order as to costs.

Vasant
Anandrao Idhol

Digitally signed by Vasant
Anandrao Idhol
Date: 2018.09.27 17:13:02
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(R.D. DHANUKA, J.)