

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.423 OF 2017

Kasam Habib Makhnojiya,]
Age : 65 years, Occ. Business,]
of Mumbai, Indian Inhabitant,]
Having address at B-205,]
Parijat Apartment F.D.C. Company,]
Jogeshwari (West), Mumbai-400102.] Applicant

Versus

1. Mohammed Naseem Khan,]
Age :... years, Occ. Business,]
of Mumbai, Indian Inhabitant,]
Having address at Wasim Timber Mart,]
Wasim Compound, Near Stone Building,]
Malvani Gate No.1, Marve Road,]
Kharodi, Malad (West), Mumbai-400095.]
2. Imran Kasam Makhnojiya,]
Age : ... years, Occ. Business,]
Adult of Mumbai, Indian Inhabitant,]
Having address at B-205,]
Parijat Apartment F.D.C. Company,]
Jogeshwari (West), Mumbai-400102.]
3. The Collector of Stamps,]
Borivali Municipal Suburban District,]
M.M.R.D.A. Building, Bandra-Kurla]
Complex, Bandra (East), Mumbai-400051.]
4. The Superintendent of Stamps,]
General Stamp Office, Ground Floor,]
Town Hall Building, Shahid Bhagat Singh]

- Road, Fort, Mumbai – 400023.]
5. The Sub-Registrar, Borivali No.1,]
M.S.D., 1st Floor, New Tahsildar Office Bldg.,]
Shahid Bhagat Singh Road, Fort,]
Mumbai – 400023.]
6. The Senior Inspector of Police,]
Malvani Police Station, Malvani,]
Malad (West), Mumbai – 400095.]
Respondent Nos.2, 3, 4 and 5 above]
through State of Maharashtra]
7. The Assistant Municipal Commissioner of]
Greater Mumbai,]
Ward P/South, Liberty Garden,]
Mamlatdarwadi, Malad (W), Mumbai-400095.] Respondents

Mr. Devdatta Ajit Sakhalkar for the Applicant.

Mr. Ashish Dubey, a/w. Ms. Ankita Upadhyay, i/by M/s. Kumar and Associates, for Respondent No.1.

Mr. Anil R. Mishra for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH MARCH 2018.

P.C. :

1. Heard Mr. Sakhalkar, learned counsel for the Applicant, Mr. Dubey, learned counsel for Respondent No.1, and Mr. Mishra, learned counsel for Respondent No.2.

2. By this Revision Application, filed under Section 115 of the Civil Procedure Code, 1908, Applicant is challenging the order dated 25th July 2017 passed by the City Civil Court, Dindoshi, Bombay, thereby rejecting the Notice of Motion No.908 of 2017, along with the Notice of Motion No.1000 of 2017, preferred by the Applicants in S.C. Suit No.609 of 2017.

3. While the Notice of Motion No.819 of 2017 taken out by Respondent No.1 for grant of interim relief was pending for consideration, Notice of Motion No.1000 of 2017 was preferred by the Applicant and Notice of Motion No.908 of 2017 was preferred by Respondent No.2, for framing preliminary issue under Section 9-A of the CPC as to pecuniary jurisdiction of the Court and on the point of limitation and for rejection of the plaint under Order 7 Rule 11(d) of CPC.

4. The submission of learned counsel for the Applicant is that, in view of the clear law laid down by this Court in the case of *Mukund Limited Vs. Mumbai International Airport and Ors., 2011 (2) Mh.L.J. 936*, whenever an application for interim relief is filed and point of jurisdiction is raised, it must be decided as preliminary issue. According to him, in the present case, when Applicant has raised such issue of

pecuniary jurisdiction and also the limitation, the Trial Court should have framed the preliminary issue accordingly. Instead of doing so, the Trial Court has rejected the Notices of Motion taken out by the Applicant and Respondent No.2 and, therefore, the impugned order passed by the Trial Court needs to be quashed and set aside.

5. However, the perusal of the impugned order passed by the Trial Court clearly goes to show that, as regards the issue of pecuniary jurisdiction, the Trial Court has directed Respondent No.1-Original Plaintiff to comply with the provisions of Bombay Amendment to Order 7 Rule 1 of CPC. Therefore, it cannot be said that the Trial Court has not adhered to the request made by the Applicant and rejected the Notice of Motion to that effect.

6. As regards the issue of limitation, the Trial Court has considered, in detail, as to how, prima facie, the Suit filed by Respondent No.1 appears to be within limitation, as from the date of knowledge about the forged documents, the Suit is filed within three years. Therefore, though the Trial Court has not framed specific preliminary issue to that effect, the Trial Court has applied its mind and arrived at its finding by holding that, prima facie, the Suit appears to be filed within limitation.

7. Moreover, as per the well settled position of law, as laid down by

the Apex Court in the case of *Foreshore Co-operative Housing Society Ltd. Vs. Praveen D. Desai (Dead), through LRs and Ors., 2015 (3) Mh.L.J. 315*, the issue of limitation being a mixed question of fact and law, that issue can be finally decided at the time of hearing of the Suit and not at this preliminary stage.

8. Apart from that, when the Trial Court has held that, there is no necessity of framing preliminary issue under Section 9-A of the CPC at this interim stage, that order being clearly of an interlocutory nature, no revision against the said order is maintainable; having regard to the fact that the said issue is expressly kept open, to be decided at the time of final hearing of the Suit.

9. Therefore, this Revision Application holds no merits; hence, stands dismissed.

10. Needless to state that, whatever observations made by the Trial Court about the Suit being within limitation, they are only of a prima facie nature and they will not come in the way of final hearing of the Suit.

11. At this stage, learned counsel for the Applicant seeks stay to the order of this Court. It is submitted that, during the pendency of this

Revision Application, the stay was operating. Hence, the said stay is extended for a period of four weeks from today.

[DR. SHALINI PHANSALKAR-JOSHI, J.]