

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2463 OF 2018

Paras Kuvarjibhai Gangani	 Petitioner
V/s.	
Keshavji Raghavji Parmar	 Respondent

Mr. Prasad Kulkarni, a/w. Ms. Yashasvita Apte, i/by M/s. Prasad Kulkarni & Associates, for the Petitioner.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4TH APRIL, 2018.

P.C. :

1. Heard Mr. Kulkarni, learned counsel for the Petitioner.
2. This Writ Petition is preferred against the order dated 27th October 2014 passed by the Extra Joint Civil Judge, Senior Division, Pune, below the application at "Exhibit-13" filed in Special Civil Suit No.1045 of 2013.
3. The said application was filed by the present Petitioner seeking various reliefs under Order 14 Rule 2(2), Order 14 Rule 5, Section 9A and Order 7 Rule 11 of the Code of Civil Procedure, 1908.

4. Needless to state that, all these provisions are having different scope and ambit and the considerations required for deciding such application filed under several provisions are also different. For e.g., while deciding the application under Order 7 Rule 11(d) of CPC, the Court has only to consider the averments made in the plaint, in order to decide whether the Suit is barred by any express provision of law; whereas, for deciding an issue of preliminary jurisdiction under Section 9A of CPC, the Court has to consider the contentions of both the parties and ascertain the exact cause of action; whereas, in respect of the application filed under Order 14 Rule 2(2) and Order 14 Rule 5 of CPC, again the issue can be decided before the application for interim injunction is decided, but, it can be decided at the time of Judgment also.

5. Therefore, the very application filed by the Petitioner before the Trial Court being misconceived, the Trial Court has rightly rejected the same. Secondly, the Trial Court has, on the basis of the averments made in the plaint, held that those averments do not make out the case that the Suit is barred by any express provision of law.

6. At this stage, it is submitted that the evidence of the Respondent-Plaintiff is being recorded and his witness is in the Witness-Box.

7. In such situation, on this count also, no interference is warranted in the impugned order passed by the Trial Court. Writ Petition, therefore, stands dismissed.

8. Needless to state that, the issue whether the Suit is barred by the provisions of Section 69 of the Partnership Act, 1932, is left open, to be considered by the Trial Court at the time of final hearing of the Suit.

[DR. SHALINI PHANSALKAR-JOSHI, J.]