

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.
WRIT PETITION NO. 6302/2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Vinod Joshi for the Petitioner
Mr. Sitesh S. Sharma for the Respondent.

CORAM : K. K. TATED, J.
DATED : MAY 4, 2018

PC.:

. Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 05.03.2015 passed by the 5th Additional Judge, Small Causes Court, Pune below Exhibit- 17 in Civil Suit No.103/2013 rejecting the Application made by the Petitioner- Defendant to frame a preliminary issue under Order XIV Rule 2 of the Code of Civil Procedure, 1908 about jurisdiction of the Trial Court to entertain the said suit.

2 The learned counsel for the Respondent submits that in view of subsequent development, nothing survives in the Writ Petition. He submits that the learned District Judge in Civil Revision Application No.8/2016 by order dated 25.07.2017 directed the Trial Court to consider following three points:

“(i) Whether the Trial Court has jurisdiction to try and entertain the suit as per section 9A of the Code of Civil Procedure, 1908 ?

(ii) The Trial Court has to decide whether the plaint filed by the Plaintiff is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 ?

(iii) The Trial Court has to decide whether it is necessary to carry out repairs or reconstruction of the suit premises with the hands of the Plaintiff ?”

3 The learned counsel for the Petitioner has placed on record a copy of order dated 25.07.2017 passed by the learned District Judge in the said Civil Revision Application. To that effect he has filed Affidavit-in-Reply dated 03.05.2018. In that Affidavit-in-Reply, he has placed on record a copy of order dated 25.07.2017 passed by the learned District Judge in Civil Revision Application No.8/2016 as Exhibit-A on page 19. Paragraph 11 of the said order reads thus:

“11. The trial court has not considered the fact that whether the suit premises requires repairs or reconstruction. The trial court has not decided whether the suit is barred by law as per Order VII Rule 11 of the CPC and about its jurisdiction as per Section 9A of the CPC. Therefore, it is necessary to remand back the matter to the trial court first to decide points :

(1) Whether the Trial Court has jurisdiction to try and entertain the suit as per section 9A of the Code of Civil Procedure, 1908, (2) The Trial Court is required to decide whether the plaint filed by the Plaintiff is liable to be rejected under Order VII Rule 11 of the CPC, and (3) Lastly, the Trial Court has to decide whether it is necessary to carry out repairs or reconstruction of the suit premises with the hands of the Plaintiff ?”

4 In view of subsequent development, nothing survives in the present Writ Petition because the Application made by the Petitioner before the Trial Court is indirectly allowed by the District Judge by the impugned order dated 25.07.2017.

5 Hence, the Writ Petition stands disposed of as infructuous. No order as to costs.

(K.K.TATED, J.)