

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13293 OF 2017

Baljit Ramlal Manchanda	 Petitioner
V/s.	
Somvati Ramlal Manchanda	
and ors	 Respondents

Mr. Surel Shah, i/by Prashant Darandale, for the Petitioner.

Saurabh M. Railkar, with Mr. Vijay R. Manchanda, for the Respondent No.3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH FEBRUARY 2018.

P.C. :

1. Heard learned counsel for the petitioner, respondent No.3, in person and learned counsel for respondent Nos. 8 and 9
2. By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 26.9.2017, passed by the Court of 7th Civil Judge Senior Division, Nashik, below Exh.83, in R.C.S. No.420 of 2010.
3. The said application was moved by respondent-plaintiff, for reconsidering the order passed by the trial Court, for framing of preliminary issue, under Section 9-A of Code of Civil Procedure.
4. It may be stated that the preliminary issue was framed by

the trial Court below application exh.73 on 26.8.2014. Thereafter affidavit-in-lieu of evidence of defendant was also filed and then in the year 2015, present application was moved contending inater alia that in view of the judgment of the Apex Court, in **Jagdish Shyamrao Thorve -vs- Mohan Sitaram Dravid and ors**, in Petition for Special Leave to Appeal No.22438 of 2015 dated 17th August 2015, relating to framing of preliminary issue under Section 9-A CPC, has been referred to Larger Bench, and therefore, the trial Court should not have framed such issue and whatever preliminary issue has been framed, be discarded.

5. The trial Court rejected the said application. Hence this Writ Petition.

6. However, even a cursory glance to the application filed by the petitioner before the trial Court goes to show that after order of framing of preliminary issue was passed on 26.8.2014, the defendant-respondent filed affidavit- in-lieu of evidence and thereafter, a period of one year, he has filed this application for reconsidering of framing of such issue. It was not only at a belated stage, but it was an after thought.

7. Learned counsel for the petitioner has placed reliance on the judgment of Division bench of this Court, in **Ferani Hotels Pvt. Ltd and anr -vs- Nusli Neville Wadia and ors**, [2013 (3) Bom. C.R. 669], to submit that framing of such preliminary issue on mere asking is not at all warranted and some preliminary enquiry was expected to be conducted. Herein the case, the order of the trial Court framing of the

preliminary issue on limitation shows that the trial Court has neither conducted such preliminary enquiry nor assigned any reason for framing of such issue. Hence on this ground also, the order of framing issue is liable to be set aside.

8. However, it is pertinent to note that in paragraph No.2 of application at Exh.83 itself, the petitioner has stated that the said application filed by respondent for framing of preliminary issue has been decided on merits and the Court was pleased to frame preliminary issue of limitation. Accordingly, even the respondent-defendant has filed affidavit-in-lieu of evidence. In such situation, as the trial Court has, after hearing the parties framed such issue and that order was not challenged and now after affidavit-in-lieu of evidence is filed, the said order is challenged, it is clearly an indirect way to challenge the order passed by the trial Court earlier and to frustrate the further proceedings.

9. The trial Court has, therefore, rightly rejected the said application. As the affidavit-in-lieu of evidence is already filed, the trial Court to decide the said issue as expeditiously as possible.

10. The writ petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]