

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9434 OF 2012

M/s. Sheth Brothers (India) Ltd. ... Petitioner

Vs

Shri Dudhganga Vedganaga
Sahakari Sakhar Karkhana Ltd. And Anr. ... Respondents

...

Mr. S.R.Ganbavale I/by Mr. Abhijeet M. Adagule for the
Petitioner.

Mr. S.S.Patwardhan for the Respondent No.1.

CORAM : SANDEEP K. SHINDE J.

DATE : JUNE 26, 2019

P.C. :

Petitioner is the defendant in the suit instituted by the
respondent no.1 (hereinafter called 'Plaintiff' for short). On 22nd July,
2011, the learned Trial Court framed the issues and the issue no.1
reads as under:

*“Whether this Court has jurisdiction to try and entertain
the suit ?”*

2 Petitioner requested the Trial Court to decide the first
issue since preliminary issue in terms of the provisions of Order XIV
Rule 2 of the Code of Civil Procedure, 1908 ('CPC' for short). This

application/request was rejected on 30th August, 2012, against which this Petition under Article 227 of the Constitution of India is preferred.

3 The learned Judge rejected the said request on the ground that the issue of jurisdiction in the present case is a mixed question of law and fact and therefore, unless the evidence is led, it cannot be concluded whether the Court has jurisdiction or not. Order XIV Rule 2(1) of the CPC gives option to the Court to decide the suit on the preliminary issue, which are subject to provisions under sub-rule (2). Sub-rule (2) of Order XIV prescribes that where issues of both of law and of fact arise in the same suit, and the Court is of the opinion that the case, or any part thereof, may be disposed of on an issue of law only. The Court may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. In the opinion of this Court, findings arrived at by the Trial Court in the application seeking framing of preliminary issue has been rightly rejected after coming to the conclusion that issue raised before the Trial Court is

the issue of fact. That even otherwise, it is submitted across the bar by the counsel for the parties, to the suit are close of leading evidence. Thus, for the reasons, no interference is called for in the impugned order. Petition is dismissed.

(SANDEEP K. SHINDE, J.)