

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11859 OF 2015**

Shri. Mahavir Sukumar Chopade & Anr. ... Petitioners

Vs

Shri. Narayan Dnyanu Todkar & Ors. ... Respondents

Mr. Sushil Inamdar i/b. Vijay Killedar, Advocate for the Petitioners.

Mr. A.A. Garge i/b. Kashyap Bhalerao, Advocate for Respondents No. 1 to 6.

CORAM : SANDEEP K. SHINDE J.

DATE : June 18th, 2019

P.C. :

1. Heard counsel for the petitioners.
2. Petitioner is the defendant in the Regular Civil Suit No. 49 of 2015. He had filed an application under Section 9(A) of the Code of Civil Procedure, 1908, inter alia objecting to the jurisdiction of the Court. The Learned Trial Judge overruled the objection and held that the Court has jurisdiction to entertain the suit by order dated 05.10.2015. It is against this order, the defendant has preferred this Writ Petition under Article 227 of Constitution of India. In fact, the petitioner ought to have filed the revision against order dated

05.10.2015 and not invoked supervisory jurisdiction of this Court.

3. Be that, as it may. The Code of Civil Procedure (Maharashtra Amendment) Act, 2018 (Maharashtra Act LXI of 2018) is deemed to have come into force on 27.06.2018. Section 3 (2) of the Amendment Act reads as under :-

“In all the cases, where a preliminary issue framed under Section 9-A has been decided holding that the Court has jurisdiction to entertain the suit, and a challenge to such decision is pending before a revisional Court, on the date of commencement of the Amendment Act, such revisional proceedings shall stand abated :

Provided that, where a decree in such suit is appealed from any error, defect or irregularity in the order upholding jurisdiction shall be treated as one of the ground of objection in the memorandum of appeal as if it had been included in such memorandum.”

4. In view of the amended provisions, the proceedings challenging the jurisdiction, being pending on the date of commencement of the Amendment Act, stands abated. However, in view of the proviso to sub-section (2) of Section 3 of 2018 Act, the petitioner may raise the issue of jurisdiction as one of the grounds, in the memorandum of appeal, if it is held against him.

5. With the aforesaid observations and for the reasons stated therein, the petition is disposed of.

(SANDEEP K. SHINDE, J.)