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

**APPEAL FROM ORDER (ST) NO.903 OF 2019
WITH
CIVIL APPLICATION (ST) NO.905 OF 2018.**

M/s Karan Group Builders and Developers and ors	...	Appellants.
V/s.		
Dindoshi Vrindavan CHS Ltd and ors	...	Respondents

Mr. Prasad S. Dani, a/w Laxminarayan Shukla, Manoj
Singh i/by MKS Legal Associates, for Appellants.
Mr. Atul Damle, Senior Advocate a/w Mr.Ashish
Shukla and Mr. Alok Singh, for the respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 17th JANUARY, 2019.

P.C. :

1] Heard learned Senior Counsels for the appellants
respondents.

2] This appeal takes an exception to the order dated 28th
December, 2018, passed by the City Civil Court, Mumbai, Borivali
Division, Dindoshi Branch in Notice of Motion No.3511 of 2017 in
L.C.Suit No.2913 of 2017, whereby the concerned Court, has decided
and disposed of the Notice of Motion without considering the
preliminary objection to it's pecuniary jurisdiction.

3] It is submitted by learned counsel for appellants that the trial Court, has specifically kept the issue of pecuniary jurisdiction for entertaining the suit, open to be decided at the appropriate time. Despite that the trial Court has proceeded to dispose of the Notice of Motion and hence it is submitted that on this very ground itself, the impugned order passed by the trial Court is required to be quashed and set aside.

4] Per contra, learned counsel for respondents points out the Daily Order Sheet of the trial Court dated 15.10.2018 to submit that in the presence of learned counsel for appellants, the submission was made by learned counsel for respondent that, instead of hearing the preliminary issue on the point of pecuniary jurisdiction, the Notice of Motion can be heard expeditiously, especially in the light of the fact that this Court has directed the trial Court to decide the Notice of Motion as expeditiously as possible. Accordingly the Notice of Motion was heard and decided. Thus, it is submitted that as the respondent did not press the preliminary issue of pecuniary jurisdiction of the trial court, it was not decided. Hence, on this count, there is absolutely no reason to assail the impugned order passed by the trial Court.

5] Moreover, according to learned counsel for respondents, even during the pendency of the decision on the preliminary issue, in view of Section 9-A (2) of the Code of Civil Procedure (Maharashtra State Amendment), the trial Court can grant “interim relief”. Hence, there is no substance in the submission advanced by learned counsel for the appellants. In support of his submission, learned counsel for respondents has relied upon the judgment of this Court, in the case of **Tayabhai M. Bagasarwalla and ors -vs- Hind Rubber Industries Pvt. Ltd and ors**¹. In paragraph No. 29 of this judgment, it is held that mere objection to the jurisdiction of the Court does not instantly disable the Court from passing any interim orders. It can yet pass appropriate order and interim orders and interim orders so passed are within the jurisdiction and effective till the Court decides that it has no jurisdiction to entertain the suit.

6] Learned counsel for respondents, has also relied upon another judgment of this Court, in the case of **Kranti Mohan Guruprasad Mehra and another -vs- Fatehchand Vasuram Behal**², wherein it has been observed in the last paragraph that:-

“the use of certain phraseology cannot be without any purpose or significance. Clause 2 of Section 9A takes care

1 MANU/SC/0280/1997

2 [1983 Mh. L.J.141]

of such a situation under which even during this interim period till the adjudication of the preliminary issue, the Court is empowered to grant the interim order purely on interim basis”.

7] According to learned counsel for the respondents, the relief which is granted by the trial Court while deciding and disposing of the Notice of Motion, is purely of interim nature and grant of such relief is permissible in the light of clause (2) of Section 9A of Code of Civil Procedure, as referred above.

8] In my considered opinion, for appreciating this submission, the relevant provisions of Section 9A clause (1) (2), Code of Civil Procedure (Maharashtra State Amendment), are required to be considered. They are reproduced as follows :-

“9-A Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue - (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the

Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction”.

9] While interpreting these provisions, this Court has, in the case of **Ferani Hotels Pvt. Ltd and ors -vs- Nusli Neville Wadia and ors**³ in paragraph No.21 of the judgment, categorically held that :-

“... ..Once the Motion for interim relief stands disposed of, the issue which the learned Single Judge has framed would cease to be a preliminary issue because then it would partake of the character of an issue which would fall for determination under Order 14 Rules 1 and 2. What the legislature has contemplated is that an issue of jurisdiction has to be disposed of first before the interlocutory application can be disposed of finally. Disposing of the Motion finally without the issue of

jurisdiction being resolved, would clearly be in the teeth of the provisions of Section 9A(1). Section 9A(1) clearly mandates that the issue of jurisdiction cannot be relegated to the stage of the hearing of the suit. Moreover, that issue has to be decided before the application for interlocutory relief can be finally disposed of. In these circumstances, we are of the view that the order of the Learned Single Judge disposing of the Motion finally is unsustainable and would to that extent has to be set aside. Consistent with the provisions of Section 9A(1) which require the raising of the issue of jurisdiction as a preliminary issue, the Learned Single Judge would have been within jurisdiction in entertaining an application for ad-interim relief within the meaning of sub section (2) of Section 9A. The hearing of the Motion for interim relief would have to be taken up after the determination of the preliminary issue under Section 9A”.

10] Therefore, it follows that once objection to the jurisdiction of the trial Court is raised, such objection has to be decided before disposing of the application for interim relief or the Notice of Motion, which is filed before the trial Court. Here in the case, , the trial Court has disposed of the Notice of Motion before deciding the objection to it's pecuniary jurisdiction. Hence though the relief granted by the trial Court may be technically called as “interim relief”, it being only till the decision of the suit as the Notice of Motion itself is disposed off,

the provisions of sub clause (2) of Section 9A of Code of Civil Procedure (Maharashtra Amendment), cannot be of any assistance.

11] As to the submission of learned counsel for respondents, that respondents do not want to press the objection relating to the pecuniary jurisdiction of the trial Court and which appears to be the reason for the trial Court to hear and decide the Notice of Motion, before deciding the said objection. Learned counsel for the appellants has relied upon the judgment of this Court in the case of **Mukund Ltd -vs- Mumbai International Airport and ors⁴** which categorically goes to hold that:-

“Once the objection is raised as to the jurisdiction of the Court to entertain the suit, as it is germane to the maintainability of the suit and not merely to the motion for interim relief. Therefore, it is not open to the defendant to obviate a decision on the issue as a preliminary issue, before the application for interim relief is decided, by merely stating that the objection is not pressed for the purpose of the Motion for interim relief. Moreover, it is duty of the Court to decide whether it has jurisdiction to entertain the suit or not, whether such objection is raised or not”.

12] Here, in the particular facts of the present case, objection

4 MANU/MH0178/2001

was raised and the trial Court has kept it open to be decided, subsequently. The order dated 15.10.2018 shows that the objection to the pecuniary jurisdiction of the trial Court was not given up, only concession was made that the Notice of Motion may be decided expeditiously instead of leading evidence on the issue of pecuniary jurisdiction. Therefore, that issue is left open and in the light judgment of the Division Bench of this Court, in the case of *Ferani Hotels Pvt.Ltd and ors -vs- Nusli Neville Wadia and ors* (supra), that issue has to be decided by the trial Court while disposing of the Notice of Motion itself finally. As the trial Court has not done so, it has become necessary to set aside the impugned order passed by the trial Court and to remand the matter back to the trial Court to decide the issue of objection to its pecuniary jurisdiction and thereafter decide the Notice of Motion. It is also open to the trial Court to hear and decide simultaneously both the issue of pecuniary jurisdiction and also the Notice of Motion.

13] Considering particular facts of the case, as this matter is dragged for one or the other reason and as respondents herein are stated to be out of possession of their premises on account of demolition of the suit structure, learned counsel for the appellants makes statement at Bar that the appellants will fully co-operate with

the trial Court in deciding the issue of preliminary issue and also hearing of the Notice of Motion. In view thereof, the Trial Court is directed to decide the same as expeditiously as possible preferably within a period of three weeks from today.

14] As a result of this order, interim order which was granted during the pendency of the Notice of Motion, stands revived for a period of three weeks.

15] In view of disposal of this Appeal, Civil Application therein also stands disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]