

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

COMMERCIAL APPEAL NO. 8 OF 2016
IN
NOTICE OF MOTION NO. 1361 OF 2013
IN
SUIT NO. 672 OF 2013
WITH
NOTICE OF MOTION NO. 1191 OF 2016

Sanyam Realtors Pvt. Ltd.

.. Appellant

Vs.

Mr. Kantilal Khimji Haria & Ors.

.. Respondents

Mr. Vivek Shiralkar a/w. Mrs. Prachi Mhatre, Ms. Yashoda Desai i/b
M/s. Shiralkar & Co. for the Appellant.

Mr. Rajiv Narula i/b Jhangiani Narula & Associates for the
Respondents.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATE : 14th NOVEMBER, 2019.

P. C. :

1. The impugned order has decided on the maintainability of the suit filed by the Plaintiffs with reference to prima facie determination of the jural entity of the Plaintiffs. As per the Defendants, who are the Appellants, the Plaintiffs constituted a partnership firm. As per the impugned order, the Plaintiffs have been held to be an association of persons. Though not mentioned Sub-section 42 of Section 3 of the General Clauses Act, 1897 forms the basis for the decision.

2. The learned Counsel for the parties state that the Appeal may be

disposed of by consent recording that the impugned order dated 30.10.2015 be treated as a prima facie view taken by the Court, requiring a substantive issue to be settled warranting trial. The substantive issue would be:

Whether the Plaintiffs are partners of a partnership firm and therefore would not be entitled to maintain the suit in view of Sub-section 2 of Section 69 of the Indian Partnership Act?

3. Thus, we dispose of the Appeal by consent of parties declaring the character of the impugned order as agreed to by the learned Counsel for the parties and also settling one preliminary issue which arises; clarifying that if any other preliminary issue arises the same would be settled along with issues of law and facts as per the pleadings of the parties. After trial, all issues would be decided.

4. In view of the disposal of the Appeal, all the interim applications are disposed of.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

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