

NSC.

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

WRIT PETITION NO.8572 OF 2019

Shri Sai Developers

Partnership Firm through Partners -

1. Mahesh Mahadev Mhatre

2. Satendra Kishna Singh ... Petitioner

Versus

Subhod A. Rao and Ors.

...Respondents

Mr. Sudhir Prabhu, for the Petitioner.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the Petitioner.

2. By this Petition, the Petitioner has impugned the order dated 15th March, 2019, passed by the learned 2nd Joint Civil Judge, Junior Division, Uran, below Exhibit – 76 in RCS No.114 of 2007, by which, the learned Judge was pleased to reject the petitioner's application to try the issue of pecuniary jurisdiction first before deciding the Suit.

3. Learned Counsel for the petitioner submits that the learned Judge ought to have decided the issue of pecuniary jurisdiction being an

issue of law first before proceeding with the trial. According to the learned counsel, the Court trying the suit, lacks pecuniary jurisdiction to try and decide the Suit and hence it was necessary to decide the said issue of pecuniary jurisdiction, before proceeding with the Suit.

4. Perused the papers including the impugned order. The respondent no.1, is the original plaintiff who has filed a Suit for specific performance of agreement and for cancellation of the sale deed as against the petitioner (original defendant). It appears that issues in the said case were framed on 6th February, 2008 and an additional issue was framed on 26th June, 2009. It appears that the petitioner neither objected nor preferred any application to try the issue of jurisdiction first as a preliminary issue. It appears that on 14th March, 2012, the respondent – plaintiff filed his evidence affidavit and filed certain documents in November, 2017 and thereafter the matter was posted for cross-examination of the respondent – plaintiff. For the first time, after almost 10 years after the institution of the suit, the petitioner filed an application (Exhibit – 72) in January, 2018 under Section 9 of Code of Civil Procedure and challenged the pecuniary jurisdiction. It appears that subsequently i.e. in December, 2018, the petitioner did not press the said application i.e. Exhibit – 72 and filed another application i.e. Exhibit – 76 on the same day with a prayer to

decide the issue of pecuniary jurisdiction first. The learned Judge after hearing the parties, rejected the said application, which is impugned in the present petition. The learned Judge has in paragraph 9 of the said order observed that having regard to the facts of the present case, the issue of pecuniary jurisdiction cannot be said to be a pure question of law. The learned Judge has also observed the conduct of the petitioner in delaying the case, which is of the year 2007.

5. No infirmity can be found in the impugned order. Accordingly, the petition is dismissed.

REVATI MOHITE DERE, J.