

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

990 WRIT PETITION NO.6535 OF 2017

SHUBHAM GOVIND BANSUDE AND ANOTHER
VERSUS
FULABAI PILYABAI BHAUSAHEB BANSUDE AND ANOTHER

.....
Advocate for Petitioners : Mr. Dr. Swapnil D. Tawshikar
Advocate for Respondent No.1 : Mr. R.S. Deshmukh, senior counsel i/b Mr.
Devang R. Deshmukh
Advocate for respondent No.2: Mr. Arvind Deshpande
.....

CORAM : V. K. JADHAV, J.
DATED : 5th FEBRUARY, 2021

PER COURT:-

1. Heard both sides.
2. Section 9A of Civil Procedure Code (Maharashtra Amendment) Act came to be deleted in the year 2018, however, notwithstanding the deletion of Section 9A of the principal Act, in terms of amended Section 3 (1) of C.P.C. (Maharashtra Amendment) Act 2018, *“where the consideration of a preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018 (hereinafter, in this case, referred to as “the Amendment Act”), the said issue shall be deemed to be an issue framed under Order XIV of the principal Act and shall be decided by the Court, as it deems fit, along with all other issues, at the time of final disposal of the suit itself”.*

Provided that, evidence, if any, led by any party or parties to the suit, on the preliminary issue so framed under Section 9A, shall be considered by the Court along with the evidence, if any, led on the other issues in the suit, at the time of final disposal of the suit itself.

3. In the instant case, though the petitioner plaintiff has filed applications Exh.120 and 149 for production of documents and permission to lead evidence, the trial court has turned down both the applications solely on the ground that the application under Section 9A is pending, with further observation that for rendering decision under Section 9A, the evidence is not required to be adduced.

4. However, in the light of aforesaid amendment in the C.P.C., after deletion of Section 9A in terms of Section Section 3 (1) of C.P.C. (Maharashtra Amendment) Act 2018, the entire exercise of examining the witness at the initial stage would be meaningless. Thus, after framing all the issues, the petitioner-plaintiff is at liberty to adduce the evidence in terms of the provisions of C.P.C. and to substantiate his pleadings.

5. In terms of the aforesaid observations, this writ petition is disposed of.

(V. K. JADHAV, J.)