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

APPEAL No. 79 OF 2020
WITH
NOTICE OF MOTION No. 19 OF 2020

Gerard Joseph Rodrigues ... Appellant
Vs.
Joseph Anthony D'cunha & Ors. ... Respondents

Mr. Sindhu Kotian a/w. Gaurav Jangle, Yash Pitroda i/by I. V.
Merchant & Co., for the Appellant / Applicant.

Mr. Sarosh Bharucha a/w. S.B. Rao i/by Gauri Rao, for the Respondent
Nos. 1 to 9.

**CORAM : S. J. KATHAWALLA &
VINAY JOSHI, JJ.**

DATE : MARCH 8, 2021

PC :

1. By the above appeal, the Appellant has impugned the order dated 2nd May, 2019 passed by the learned Single Judge under Section 9A of the Code of Civil Procedure, 1908, holding that prayer clauses (a), (b), (d), (e), (f) and (g) are barred by the law of limitation. Thereafter, the Apex Court has in the case of *Nusli Wadia Vs. Ivory Properties & Ors.*¹ *inter alia* held that the question of limitation in no case can be said to be a question of jurisdiction of court in the context

1 (2020) 6 SCC 557

of Section 9A of the Code of Civil Procedure, 1908, and therefore, cannot be decided as a preliminary issue of jurisdiction under Section 9A of the Code.

2. In view thereof, following order is passed by consent of parties:

- (i) The judgment of the learned Single Judge pronounced on 2nd May, 2019 is set aside.
- (ii) The issue of limitation shall be decided by the learned Single Judge alongwith the other issues raised in the suit.
- (iii) The evidence recorded by the learned Single Judge on the issue of limitation and the documents filed by the parties with regard to the said issue shall be treated as evidence by the learned Single Judge whilst deciding the said issue afresh and the parties shall not file any further evidence or documents qua the issue of limitation.
- (iv) All contentions of the parties are kept open.
- (v) Pending the hearing and final disposal of the suit, earlier order/s passed and undertaking/s recorded by the Court shall continue to be in force.

- (vi) The appeal is disposed of in the aforesaid terms.
- (vii) In view of the disposal of the appeal, Notice of Motion No. 19 of 2020 does not survive and is accordingly disposed of.

[VINAY JOSHI, J.]

[S. J. KATHAWALLA, J.]