

issue under Section 9A of the Code of Civil Procedure, 1908 which issue was on bar of suit under the provision of the Limitation Act, 1963 and for determining the issue as a preliminary issue as contemplated under Section 9A of the Code of Civil Procedure, 1908.

3 By an order dated 17.01.2018, this Court had framed issue as under :

“i) Whether the Suit as filed by the Plaintiff is barred by the Law of Limitation?

4 It is contended that Section 9A of the Civil Procedure Code was repealed with retrospective effect from 27.06.2018 vide Code of Civil Procedure (Maharashtra Amendment) Act, 2018 enacted on 29.10.2018 (First Amendment). Thus, Section 9A was deleted from the statute book. In view thereof, the issue of limitation so framed under Section 9A, would be decided at the final hearing of the suit along with other issues after the trial. Thereafter, the Code of Civil Procedure (Maharashtra Amendment) (Amendment) Act, 2018 was enacted on 15.12.2018 (which is referred to as “Second Amendment”). By the Second Amendment, the relevant provision i.e. Section 3(1) was substituted with the effect that the preliminary issues framed as on 27.06.2018 would be decided under the erstwhile section 9A as preliminary issues i.e. as if the provision had never

been deleted from the statute book.

5 The legal position on this issue underwent a further change on 4th October 2019. This is by virtue of the decision of the Supreme Court in *Nusli Wadia vs. Ivory Properties* reported in (2020) 6 SCC 577. The Supreme Court held that the issue of limitation is not and can never become a preliminary issue within the meaning of Section 9A of the Code of Civil Procedure. The Supreme Court has upheld the earlier decision of the Supreme Court in *Kamalakar Eknath Salunkhe vs. Baburav Vishnu Javalkar* (2015) 7 SCC 321, wherein the Supreme Court had opined that the expression “jurisdiction” in Section 9-A is used in a narrow sense as to maintainability, only on the question of inherent jurisdiction and does not contemplate issues of limitation. Thus, in view of the decision of the Supreme Court in *Nusli Wadia vs. Ivory Properties* (supra), the position has become clear that the issue of jurisdiction framed by this Court vide order dated 17.01.2018 can no longer be a preliminary issue and necessarily will be required to be decided along with the other issues at the final hearing of the Suit.

6 In view thereof the Notice of Motion which has sought limitation to decide as a preliminary issue and pursuant to which the issue was framed is required to be disposed of in light of the decision of the

Supreme Court in *Nusli Wadia vs. Ivory Properties* (supra). The issue of Limitation will form part of the issues to be framed in the above Suit and tried at the final hearing.

7 Accordingly, the Notice of Motion No.786 of 2017 is disposed of in the above terms.

(R.I. CHAGLA, J.)

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