

Nikita

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

CIVIL REVISION APPLICATION NO.538 OF 2018

Axis Housing Private Limited Thr.
Director and Authorized Mr. Anish Shah ... Applicant

V/s.

Shyamsundar Radheshyam Agarwal and
Ors. ... Respondents

Mr. Girish S. Godbole, Sr. Advocate, a/w Mr. Atharva
Dandekar, for the Applicant.

Mr. Girish S. Godbole, Sr. Adv. i/b Ms. Shruti Tulpule,
and Mr. Atharva Dandekar for Respondent Nos.1 & 2.

Ms. Shivani Samel for Respondent No.3.

Mr. Sandesh D. Patil a/w Mr. Pavan Patil i/b Ms.
Anusha Amin , for the Applicant.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 25, 2023

P.C.:

1. This is an application under Section 115 of the Code of Civil Procedure, 1908, held plaintiff suit within limitation on an issue framed under Section 9 (a) of the Code of Civil Procedure, 1908.

2. It appears that during the pendency of the present civil revision application, the three Judges of the Apex Court in the case of **Nusli Neville Wadia v. Ivory Properties & ors.**, reported in **2019 (3) SCALE 620** held that limitation cannot be an issue under Section 9(a) of the Code of Civil Procedure, 1908. Issue of limitation framed under Section 9(a) of the Maharashtra

Amendment to Code of Civil Procedure, 1908, needs to be decided at the time of final hearing of the suit.

3. The Apex Court thereafter in **Shyam Madan Mohan Ruia & Ors. Vs. Messer Holdings Limited & Ors.** decided on 13th December 2019 in Civil Appeal No.9429 of 2019 held that in the facts of the said case, the Single Judge and Division Bench decided issue of limitation under Section 9(a) and such judgment is a nullity and issue will have to be decided afresh.

4. Therefore, in my opinion, it would be in the fitness of things that the Trial Court is directed to decide the issue of limitation afresh. Hence following order:

5. The impugned order dated 6th February 2018 passed by the learned 7th Joint Civil Judge Senior Division, Thane, in Special Civil Suit No.326 of 2016, is quashed and set aside.

6. The Trial Court is directed to decide the issue uninfluenced by the observations made in the present order at the time of final hearing of the suit.

7. Civil Revision Application stands disposed of.

8. In view of dismissal of the application, all pending interlocutory applications are disposed of as infructuous.

(AMIT BORKAR, J.)