

Nikita

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

WRIT PETITION NO.13325 OF 2018

Sheetal Dhairyasheel Mohite-Patil and
Ors.

... Petitioners

V/s.

Swami Jagadguru Shankaracharya Peeth
Karvir Thru. Secretary, Prasad Dattatray
Kulkarni

... Respondent

Mr. Sandeep D. Paigude, for the Petitioners.

Mr. Rajesh S. Datar for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 24, 2023

P.C.:

1. Challenge in this petition under Article 227 of the Constitution of India is to the order passed by the Trial Court rejecting an application under Order 14 Rule 2 of the Code of Civil Procedure, 1908 to decide issue of maintainability of the suit and the jurisdiction of the Civil Court along with all other issues.

2. According to the learned advocate for the petitioners, this Court by order dated 29th July 2015, reserved liberty to petitioners to file an application under Section 9(A), in case the order of the Collector attains finality. According to him, due to delay in proceeding, in the interregnum, Section 9(A) came to be deleted. Therefore, rights of the petitioners cannot be affected by the acts

of the plaintiff. According to him, consent given by the defendant to postpone the adjudication of issue under Section 9(A) cannot be construed as denial of right created under Order 14 Rule 2 of Code of Civil Procedure, 1908.

3. Insofar as the issue of maintainability or jurisdiction under Order 14 Rule 2 of Code of Civil Procedure, 1908 is concerned, it is well settled that such an issue can be framed by the Trial Court as preliminary issue if, such issue is a pure question of law. Such question can be decided at preliminary stage, however, the exercise of power of Civil Court to decide the issue of jurisdiction or maintainability of the suit at the threshold of proceedings has been deprecated by the Apex Court in the case of **Major S.S. Khanna Vs. Brig. F.J. Dillion**, AIR 1964 SC 496. The Apex Court in the said judgment in paragraph No.18, has observed as under:

“18. ... Under Order 14 Rule 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. *Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.*”

(emphasis supplied)

4. The view of the Apex Court is thereafter, followed by the Apex Court in the case of **Ramesh Chandra Sankla and Ors. Vs. Vikram Cement and Ors.** reported in (2008) 14 SCC 58. The Apex Court relied on recommendations of law commission which disproved the tendency of deciding certain issues as preliminary issues. The rationale is elimination of delay and to avoid such delay. It was expected that the Court must give judgment on all issues.

5. In the present facts, the suit is filed in the year 2009. Therefore, in my opinion, in 2023, it would not be proper to decide issue of jurisdiction/maintainability at the threshold. The exercise of power by the Trial Court to postpone adjudication of the issue of jurisdiction/maintainability would not affect substantive rights of the defendant.

6. Therefore, exercise of power by the Civil Court is within the jurisdiction of the Civil Court. No interference is, therefore, called for in the impugned order.

7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)