



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

955 WRIT PETITION NO. 10369 OF 2017

Saurabh Pramod Mahajan

....Petitioner

VERSUS

Pradeep Uttamrao Patil & others

.....Respondents

.....

Mr. M. M. Patil (Beedkar), Advocate for the Petitioner.

Mr. V R. Dhorde, Advocate for Respondent Nos. 1 to 3.

CORAM : R. M. JOSHI, J.

DATE : 14th NOVEMBER, 2024.

PER COURT :

1. This Petition takes exception to the order dated 24.02.2017 passed below Exhibit 1 in Special Civil Suit No. 65/2013 whereby the learned Trial Court has held that the suit filed for specific performance is not within limitation. It is further held that the suit for refund of earnest money, damages and injunction is in limitation.

2. Learned counsel for Petitioner submits that irrespective of the facts involved in the present case, in view of the settled position of law by the Hon'ble Supreme Court in case of Nusli Neville Wadia vs. Ivory Properties and others, **(2020) 6 Supreme Court**

Cases 557, the issue of jurisdiction under Section 9A of the Code of Civil Procedure can be entertained only to the extent of jurisdiction of the Court and not in respect of any other issue. He also placed reliance on judgment of Division Bench of this Court in case of Govinda Goga Donde vs. Mayur Ramesh Bora, **2024(4) Bom.CR. 449**, wherein it is held that while exercising powers under Section 9A of the Code of Civil Procedure, Trial Court cannot frame a issue which has effect of disposing of the suit or cause of action in part. It is submitted that order impugned is contrary to the law laid down by Division Bench of this Court as well as Hon'ble Apex Court.

3. Learned counsel for Respondents has tried his best to convince this Court that no interference is required to be caused in this order.

4. The order impugned came to be passed on the basis of an application filed by Defendant claiming that the suit is not within limitation. On the basis of the said application, preliminary issue came to be framed and decided. The law settled by the Hon'ble Supreme Court does not permit the Trial Court to frame issue as a

preliminary issue except it goes to the root of the jurisdiction of the Court.

5. Apart from this, Division Bench of this Court in no uncertain terms as held that powers under Section 9A cannot be exercised by the Trial Court to frame an issue which has effect of disposing of the suit in part or cause of action in part. The order impugned shows that the suit is held to be maintainable in respect of injunction, refund of earnest money and damages whereas it is held to be not maintainable in respect of specific performance of contract. This is wholly impermissible in law.

6. In view of above discussion, the order impugned cannot sustain. Hence, petition stands allowed in terms of prayer clause 'C'. Needless to say that all issues sought to be raised by defendants are kept open during the course of trial.

(R. M. JOSHI)
Judge

dyb