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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7626 OF 2023

Suhas Vishnupant BandewarPetitioner

Vs.

The State of Maharashtra Thr.Respondents
The Urban and Planning and ors

Mr. Prasad Kulkarni a/w Mr. Nakul Vivek Shukla for the petitioner
Ms. Ashwini Jadhav a/w Mr. Jagdish G. Reddy for respondent
no. 2

Ms. M. S. Srivastava, AGP for respondent no. 1

CORAM : GAURI GODSE, J.

DATE : 3rd JULY 2025

ORDER:

1. Respondent no. 2 who is the contesting party waives notice for final disposal of the petition. The impugned order is passed on an application made by respondent no. 2 who is defendant no. 2. Rest of the respondents are the original defendants, hence, notice is not necessary to those respondents for deciding this petition.
2. This petition is filed by the original plaintiff to challenge the order dated 15th April 2023 passed by the Trial Court rejecting the

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application under Order VII Rule 11(d) of Code of Civil Procedure, 1908 ('CPC') and further framed the preliminary issue of jurisdiction. The learned Judge has directed the parties to lead evidence. By rejecting the application under Order VII Rule 11 of CPC, the learned Judge has framed preliminary issue under Section 9A of CPC.

3. Learned counsel for the petitioner submits that though Section 9A is deleted from the statute, learned Judge has referred to Section 9A and framed the preliminary issue on jurisdiction while rejecting the application under Order VII Rule 11 of CPC. Learned counsel for the petitioner submits that this Court vide order dated 13th October 2022 in Writ Petition No. 1529 of 2020 granted liberty to private parties to institute the civil proceedings for agitating their rights in respect of the property.

4. Learned counsel for the petitioner further submits that pursuant to liberty granted by this Court, the suit is filed. He submits that though the application before the Trial Court was rejected under Order VII Rule 11(d) of CPC, the learned Judge has erroneously exercised powers under Section 9A of CPC

which is already deleted. He, therefore, submits that the impugned order would require interference by this Court.

5. Learned counsel for the respondent no. 2 submits that the application under Order VII Rule 11(d) for rejection of the plaint was filed as the prayers in the suit pertain to the order passed under The Maharashtra Regional and Town Planning Act ('MRTP Act') refusing the sanctioned plan. She submits that the said order is appealable under Section 47 of the MRTP Act. Hence, the suit is barred and the Civil Court would not have jurisdiction to try and entertain the prayers in the suit.

6. I have perused the papers of the petition. The Writ Petition was filed by the petitioners before the Division Bench of this Court to challenge the permission dated 4th September 2019 by the Municipal Council for a revised construction layout. As the order is appealable under Section 47 of the MRTP Act, this Court rejected the petition by keeping all contentions of the parties open. This court observed that Municipal Council would not be concerned with internal dispute between the petitioner and respondent nos. 3 and 4. Hence, this Court observed that it would be open for

respondent nos. 3 and 4 and the petitioner to institute civil proceedings for adjudication of their rights in respect of the property in question. It is this liberty which is sought to be relied upon by the plaintiff to contend that Civil Court would have jurisdiction to try and entertain the suit.

7. I have perused the prayers in the suit. The suit is filed seeking similar reliefs as claimed in the petition as the prayers pertain to a declaration to the permission dated 4th September 2019 revising the construction layout. However, the learned Judge erroneously exercised powers under Section 9A of CPC for framing preliminary issue on jurisdiction. Considering the prayers in the plaint, the objection raised on behalf of the Municipal Council by filing application under Order VII Rule 11(d) of CPC should have been considered by the learned Trial Judge, to decide the application as contemplated under Order VII Rule 11 of CPC. If the objection raised on behalf of the Municipal Council were to be accepted, the learned Judge ought to have exercised powers under Order VII Rule 11 of CPC. However, the approach adopted by the learned Judge by framing the preliminary issue on

jurisdiction by relying upon a deleted Section 9A of CPC would not be sustainable. Hence, in my view, the application under Order VII Rule 11 of CPC is required to be considered by the learned Trial Judge in proper perspective. The impugned order framing preliminary issue under Section 9A of CPC would, therefore, not be sustainable.

8. The petition is therefore, partly allowed by passing the following Order:

ORDER

I. The impugned order dated 15th April 2023 and the preliminary issue framed below Exhibit 1 is quashed and set aside.

II. The learned Civil Judge Senior Division, Barshi, shall hear the application at Exhibit 41 afresh, in accordance with law.

III. Rival contentions of the parties on merits are kept open.

IV. Application at Exhibit 41 shall be decided

afresh, on its own merits, uninfluenced by any observations in the impugned order.

9. Writ Petition is partly allowed in aforesaid terms.

[GAURI GODSE, J.]