

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 818 OF 2026

Manoj Manilal Gala ...Petitioner

**Versus**

Eric Parvez Khaver and ors. ...Respondents

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Mr. Simil Purohit, Senior Advocate, a/w Ankur Shah, Niranjana Parekh and D. Salvi, i/b Mansukhlal Hiralal & Co., for the Petitioner.

Mr. Atul Damle, Senior Advocate, a/w Nainesh Amin, Priyama Amin, i/b N. N. Amin & Co., for Respondent Nos.3 and 4.

**CORAM: N. J. JAMADAR, J.**

**DATED: 11<sup>th</sup> FEBRUARY, 2026**

**Order:-**

1. Heard Mr. Purohit, the learned Senior Advocate for the petitioner, and Mr. Damle, the learned Senior Advocate for respondent Nos.3 and 4.

2. The predecessor-in-title of the respondents – original plaintiffs instituted a suit against the predecessor-in-title of the petitioner, being Suit No.109070/1995 seeking a declaration that, the partnership firm between the original plaintiffs and defendants stood dissolved with effect from 31<sup>st</sup> March, 1994 or at least from 26<sup>th</sup> May, 1994. And that the plaintiffs and second defendant have 10% share and the first defendant has 70%

share in the profits of the said firm and the consequential reliefs.

3. It was the stand of the predecessor-in-title of the petitioner that the transaction was essentially that of tenancy and not a partnership. Original defendant No.1 filed an application for framing and determining the issue of the jurisdiction of the City Civil Court under Section 9A of the Code of Civil Procedure, 1908, as it then stood, in its application to the State of Maharashtra. Accordingly, the trial Court framed and tried the issue; whether the City Civil Court has no jurisdiction to entertain, try and decide the suit in view of the claim of tenancy?

4. The parties led evidence. By an order dated 19<sup>th</sup> May, 2024, the trial Court decided the said issue in the negative and declared that the City Civil Court has jurisdiction to try and decide the suit.

5. During the course of the hearing of the said preliminary issue, the petitioner has tendered two cassettes containing the conversation between the original plaintiff No.1, his wife Mrs. Humayun and original defendant Nos.1 and 1A, and the transcripts thereof. The said evidence was discarded by the learned Judge doubting the genuineness of the conversation

and the possibility of tampering with the said tape recorded conversation.

6. The petitioner took out instant Notice of Motion No.5902 of 2024 for sending the said cassettes to the Forensic Science Laboratory (FSL), Kalina, for verification with a direction to plaintiff No.2 to provide his voice sample for ascertaining the genuineness of the conversations recorded therein. By the impugned order, the learned Judge, City Civil Court, rejected the Notice of Motion reiterating that the cassettes did not form clinching, unambiguous and reliable evidence.

7. Mr. Purohit submitted that when the evidence on the preliminary issue was being recorded, the technology had not developed. Now it is possible to ascertain the genuineness of the voice samples, with a reasonable certainty. As the case of defendant Nos.1A rested on the said conversations, which clearly indicate that the true nature of the relationship between the parties was clearly acknowledged by the plaintiff, refusal to send the cassettes for forensic analysis causes grave prejudice to the defendant - petitioner as he would be deprived of the opportunity to lead evidence. Eventually, Mr. Purohit would urge, the Court may not take into account the report of FSL.

However, that cannot be a ground to reject the prayer to have the cassettes examined and its genuineness certified.

8. In opposition to this, Mr. Damle, the learned Senior Advocate for respondent Nos.3 and 4, would submit that the veracity and the genuineness of the cassettes and, the evidence sought to be adduced in that regard, have already been evaluated by the trial Court, while holding that the City Civil Court has subject matter jurisdiction, and the said order has attained finality. Yet, at the fag end of the trial, the defendant has made an endeavour to further delay the disposal of the suit. Therefore, the impugned order does not warrant any interference. Attention of the Court was invited to the observations made by the trial Court while dealing with the preliminary issue of jurisdiction.

9. The foundational premise of the submission of Mr. Purohit that the said evidence was not considered for the sole reason that at that point of time, it was impossible to ascertain the genuineness of the voice samples, does not appear to be well merited. From the perusal of the order dated 19<sup>th</sup> May, 2014 passed by the learned Judge, City Civil Court, determining the issue of tenancy against the defendants, it becomes abundantly clear that the trial Court has referred to multiple factors, (other

than doubting the genuineness of the conversation recorded in the cassettes), on account of the custody of those cassettes having remained with the defendants. The observations in paragraphs 40, 41, 42 and 60 to 63 of the said order make it explicitly clear that the learned Judge, City Civil Court, had ascribed multiple reasons for declining to place reliance on the conversations in those two cassettes. As the said order has admittedly attained finality, on first principles, it is not open for the defendants to again agitate the said issue in a different manner.

10. Moreover, the Court finds that the evidence, now sought to be adduced in the form of the conversation contained in those cassettes, is not relevant for the determination of the issues that survive for adjudication. Since the issue as regards the character of the jural relationship between the parties stands concluded by an order dated 19<sup>th</sup> May, 2014 on the preliminary issue, the endeavour of the defendants to reopen the said issue was rightly repelled by the learned Judge, City Civil Court.

11. Thus, in exercise of supervisory jurisdiction, no interference is warranted with the impugned order.

12. The petition, thus, stands dismissed.

[N. J. JAMADAR, J.]