BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 100/2024 (WZ)

Vanashakti & Others .. Applicants

Vs.

Municipal Corporation of Greater Mumbai & Others .. Respondents

Affidavit in Reply on behalf of Respondent No. 11

I, Sanjay Shreeniwas Shenolikar, Age - 58 yrs., Occupation – Service, Authorized Representative of Respondent No.11, having registered office at – Construction House, B, 2nd Floor, Opposite to Khar Telephone Exchange, 623 Linking Road, Khar (West), Mumbai 400052 do hereby state on solemn affirmation as under –

This respondent has already filed primary affidavit in the matter. This affidavit is an additional affidavit pursuant to submission of the report by the Joint Committee constituted by Hon'ble NGT.

1. I have gone through Committee Report which is forwarded through email dtd.3/9/2024, some of the findings are not correct, hence I am constrained to file the present affidavit.

2. The report which is uploaded and received by this Respondent by email does not bear the signature of the members. There is no explanation as to why the same is not signed.

3. The contents of Para 1 of the report is part of the record.

4. The contents of Para 2 of the report, I would like to state that, Respondent No. 11 has already obtained the permission from Competent Authority for the development of portion of the plot falling within ESZ which is annexed with the Joint Committee Report as Annexure 6.

5. With respect to the contents of Para 3, I state that, the plot bearing CTS No. 827A/4A/2 of Village Malad (East) adm. about 80934 sq.mtr. is deleted from No Development Zone and included in residential Zone of police housing along with 18 meter wide road which is to provide access to police housing plot running parallel to boundary of SGNP. The said plot bearing CTS No.827A/4A/2 of Village Malad (East) belongs to D.B. Realty. These respondents are not concerned with said Police Housing plot.

6. With respect to Para 4 & 5 of the report are part of the record.

7. With respect to contents of Para 6 of the report needs explanation which is as follows - These respondents state that there were no trees on the site except the trees that have been planted by these respondents. The site is barren land with large plateaus and is having shrubs and grass. In the past, the plot was under cultivation. There were no trees existing on site as can be seen from the NOC u/no SG/TA/16 dated 22.4.2013 issued by Superintendent of Gardens & Tree Officer. To date, this respondent has planted 1003 trees on the plot under reference. The copy of the letter issued by Dy.

Superintendent of Gardens certifying the same has been submitted with previous affidavit. The report of the Joint Committee is silent about this aspect of existing trees on site at present. The photographs of existing trees are annexed hereto. The report categorically states that no root stocks which could allow the natural re-growth were found during the inspection, this itself indicates that there is no tree cutting as alleged by the Applicant. I say that Respondent have been directed by the Chief conservator of forest and Director SGNP to adopt certain preventive measures at their cost to avoid fire vide its letter dated 19.01.2019. One of the conditions is to cut dry grass and bushes twice a year to avoid fire as per the said directives. Copy of the directives dated 19.01.2019 is attached with the report as Annexure-7.The incidence of fire took place on 3.12.2018 on the plot under reference which happened as the dry bushes and grass, dry shrubs on the plot caught fire and spread rapidly. The cause of the fire is unknown. The applicant has annexed the Google satellite images to the application wherein no trees are seen on the plot. The existence of numerous trees on the plot as described by MPCB in its investigation report about the fire incidence does not appear to be correct. Moreover, the inspection report dtd.6/12/2018 at Page no.320 is with respect to S.No.110/2, Malad, the said survey number is not the subject matter of the inspection. The plan/ sketch showing the location of existing trees from MPCB is not annexed to the report. In this context, this Respondent is enclosing herewith the letter forwarded by the Chief Forest Conservator & Director SGNP to the Member Secretary MPCB wherein the possible reason for the fire broke out on 3.12.2018 are mentioned. These respondents have obtained the NOC u/no SG/TA/16 dated 22.4.2013 from

Superintendent of Gardens & Tree Officer stating therein that no trees were existing. These respondents are required to plant trees as per provisions of regulations during the development and as such there is no cause or reason or purpose for respondents to destroy any existing tree and plant new trees. I say that the plans for the development on the plot were approved and some of the buildings were completed much before fire incidence took place. Mr Mayuresh Bhoir in his statement in the NC as at Annexure 9 attached with Joint Committee Report stated that the incidence occurred due to fire caught by grass, plants, shrubs etc, he has not mentioned anything about the existence of trees in the NC report. I say that NC is entirely based on the report of MPCB's erroneous findings, irrespective of these facts, Police Inspector, Dindoshi Police Station admit it vide his letter addressed to Chief Forest Conservator & Director dated 16.8.2024 as at Annexure-10 attached with Joint Committee Report that the investigation as per the provisions of IPC has been completed and the 'A' summary report has been submitted to Metropolitan Magistrate Court no 39 by Police Inspector, Dindoshi Police Station. At this juncture, cognizance of the letter dtd.11/12/2018 cannot be taken as being barred by law of limitation.

8. With respect to contents of Para 7 of the Committee Report, I say that the advance possession of 18.30 m wide D.P. Road running parallel to the SGNP along the Northern boundary of the plot is taken over by Municipal Corporation and handed over by these respondents which provides access to the Police Housing plot. The B.M.C. is carrying out the work of development of said road through a contractor for which work order has been issued. The plans have been approved on

the plot under reference for IT/ITE/Residential buildings, five IT/ITE buildings are completed and balance development work and infrastructure work is in progress as per said approvals.

9. These respondents deny the averments made in point no 8 of the Committee Report. I say that the portion of land on which previous development activities were carried out does not fall in the catchment of said Nalla and is far away on the northern side of the Walbut Nalla. However natural water flow of Walbut Nalla is maintained and is flowing unobstructed without any disturbances as such no water logging has been observed. The said Nalla is dry in all the seasons and gets water only during Monsoon. The SWD department of Municipal Corporation is the authority to issue the Major Nalla remarks for training of nallas with adequate width. I say that Respondent No.11 has already obtained the remarks for part portion of the Nalla and carried out the work of training the Nalla accordingly. A copy of remarks is annexed to the Joint Committee's report as Annexure 11. The internal SWD shall be done as per the remarks issued by BMC in annexure 12 of Joint Committee's report. During the process of development, the requisite remarks for the balance portion of Nalla shall also be obtained by these respondents from SWD department of BMC or from consultants/experts in this field and shall carry out the work accordingly. The provision of necessary pathway shall also be made for cleaning/ desilting the Nalla.

10. With respect to contents of Para 9, I say that the development of D.P. Road will be done by BMC through the Contractor. The

infrastructure/accesses work with excavation/ filling/levelling and with provision of SWD is being done as per the remarks/approvals issued by BMC. The said activities of excavation/levelling required for the various development activities cannot be considered as Hill Cutting. The excavation / filing / levelling for development is permissible activity. The site is having large plateaus where the development is proposed and is being carried out. The contents of Para 9 of the report are not admitted.

11. With respect to Para 10 of the report, I say that the plot bearing CTS No. 827A/4A/2 of Village Malad (East) which is reserved for "Police Housing is situated between SGNP and the plot being developed by Respondent No 10. I say that respondents are not concerned with said Police Housing plot or its development.

12. With respect to para no.1 of the recommendation described in the report, I state as under:

a) I say that after completing the requisite procedure including inviting suggestion/objections, the ESZ notification was issued on 5.12.2016 by MOEF of Central Government. The Construction activity is a regulated activity and is not a prohibited activity as per the said sanctioned notification and is permitted within the Eco-sensitive Zone as per the provisions of the approved Development Plan and other applicable rules and regulation under the Maharashtra Regional and Town Planning Act.

b) The new Development Plan for Mumbai was sanctioned on 8.5.2018 along with DCPR 2034 after following due process as stipulated under MRTP Act 1966. The ESZ line is distinctly marked on the said sanctioned D.P. Plan by BMC so that NOC from Monitoring Committee can be insisted upon from Project Proponent.

c) The said ESZ is sanctioned by MOEF of Central Government irrespective of the zoning of the land. The Joint Committee's suggestion to impose a key condition in the Zonal Master Plan stipulating that no areas currently designated as No Development Zone (NDZ) within the Eco-sensitive Zone (ESZ) of the Sanjay Gandhi National Park shall be converted into Development Zones in the future cannot be included in Master Plan since such condition will be beyond the scope of DCP regulation framed and sanctioned as per MRTP Act and ESZ Notification sanctioned under Environment Act. NDZ is allowed to be developed for certain users including IT / ITE alongwith residential users as per DC&P Regulations & no additional restrictions can be imposed.

13. With respect to para no.2 of the recommendation described in the report, I state that the Police Inspector, Dindoshi Police Station vide his letter addressed to Chief Forest Conservator & Director dated 16.8.2024 as at Annexure-10 attached with Joint Committee Report admittedly stated that the investigation as per the provisions of IPC has been completed and the 'A' summary report has been submitted to Metropolitan Magistrate Court no 39 by Police Inspector, Dindoshi

Police Station. It is not appropriate to doubt the methodology of the investigating Authority. Reviewing of the police report is not within the jurisdiction of Joint Committee since the matter is subjudice with Metropolitan Magistrate Court.

14. With respect to para no.3 of the recommendation described in the report, I state as under -

a) the current excavation within ESZ is being carried out by MCGM for the development of 18.3 mtr wide road. These respondents submit that the excavation, leveling, filling required for the development of the buildings on the plot including the infrastructure, roads, accesses, compound walls, retaining walls etc is permitted under the MRTP Act and the same cannot be construed as Hill Cutting.

b) The Hon'ble Supreme Court in the Civil Appeal No 6932 of 2015 has set aside the judgment of Bombay High Court regarding cutting of hills and quashed the directives in the notification under Section 154 of MRTP Act dated 14.11.2017 issued by the Govt. A copy of the order has been submitted with the previous affidavit of these respondents.

15. With reference to para no 4 of the recommendation described in the report, I say that 1003 trees have been planted on the plot. These respondents further state that the plot is affected by ESZ only to the extent of 100 m from the boundary of SGNP. It will not be possible to develop 50 m belt along SGNP boundary since the 18.3 m wide D.P.

Road is being developed by BMC running parallel to SGNP boundary and due to the Police Housing touching SGNP boundary. Moreover, there is a specific clause for the plantation of trees in DCPR and as such the requisite number of the trees can be planted anywhere on the plot at suitable locations around the buildings, along the accesses, roads instead of planting the same within 50 m belt. The forest department has not made any such suggestion of 50 mtr. green belt during the process of sanctioning ESZ notification. No such condition was proposed in the said ESZ Notification by MOEF of Central Government. Further, there is no such condition in the DCPR 2034 for a 50-meter buffer zone for plantation of the trees during the development on the plots. Therefore forest department cannot unilaterally imposed such conditions.

16. With reference to para no 5 of the recommendation described in the report, I say the development of IT/ITE along with Residential user is permissible as per regulations no 60 of the then prevailing regulations i.e. amended DC Regulations 1991 and accordingly plans have been approved. The ESZ NOC is also issued by the SGNP ESZ Monitoring Committee in respect of the development as per approved plans. The balance development is in progress.

17. With reference to para no 6 of the recommendation described in the report I state as under -

a) I say that Applicant has filed Application No 193 of 2016 challenging the sanctioned ESZ notification which was dismissed by Hon'ble NGT on 24.01.2020. This application

seems to be clearly at the behest of applicant Wadia to rake up an issue when there is no issue.

b) The Joint Committee recommended that this 50-meter buffer zone be made a mandatory requirement across the entire ESZ surrounding Sanjay Gandhi National Park. In this context, it may be pointed out here that ESZ notification was issued by MOEF of Central Government after following due process of law around 8 years back i.e on 5.12.2016. Most of the areas around SGNP all over Mumbai have already been substantially developed. No such condition was proposed in the said ESZ Notification by MOEF of Central Government. Further, there is no such condition in the DCPR 2034 for 50-meter buffer zone for plantation of the trees during the development on the plots. Thus, the said proposed recommendation of Joint Committee will be beyond the ESZ notification already sanctioned by MOEF of Central Government under Environment Protection Act and also the DCPR 2034 sanctioned by the State Govt of Maharashtra under MRTP Act. These present sanctioned regulations are adequate to improve the overall environment. The ESZ laws already set out and cannot be re-changed by the forest department singularly.

18. I say that there is a dispute going on regarding the development activities on a portion of the plot which is a subject land of the matter before this tribunal and Nulsi Wadia who is Administrator of Estate of Late E.F.Dinshaw has filed suit bearing No.1628 of 2008 on 13/5/2008 seeking number of reliefs against the Respondent. In the said suit Administrator has sought various reliefs along with an

injunction Justice Roshan Dalvi passed the order on 24/06/2010 which was pronounced on 19/07/2010, the said order was challenged by the Respondent No.7 before the Division Bench of Hon'ble High Court Bombay in Appeal bearing No. 817/2010. The Applicant had also preferred an Appeal bearing No. 806/2010 in which the Hon'ble High Court has passed a common order vide order dated 19/7/2012 by which Appeal filed by the Respondent No.7 was allowed and the order passed by the Single Judge dated 19/07/2010 is set aside. A copy of the order is annexed herewith as **Annexure R____** and wants to rely upon the same. Various directions were given in the appeal by the Appellate Court. The order passed in appeal was further challenged in the Supreme Court by filing SLP which was dismissed on 8/4/2015. A copy of the order passed by the Hon'ble Supreme Court is annexed herewith as **Annexure R-___.** The Review Petition No. 2856/2015 is also filed before the Hon'ble Supreme Court which was disposed off vide order dtd.6/5/2022. The Curative Petition No. 193-194/2021 was also dismissed vide order dated 19/07/2022. A copy of the orders is annexed herewith. This respondent apprehends that Nulsi Wadia who is Administrator of Estate of E.F.Dinshaw might have instigated the present Applicants to file the present proceedings. The prayer in the present petition and the petition filed by Nulsi Wadia who is Administrator of Estate of E.F. Dinshaw are practically the same i.e. asking for injunctions against the Ferani Hotels from not developing the property even though in this petition the ground is taken of environment protection and before the High Court injunctions asked against this respondent not to develop the suit property and he has also claimed damages in the amount of Rs1370.06 Crores thus it can be seen that one way or other Nulsi

Wadia who is Administrator of Estate of E.F. Dinshaw wants to pressurize this respondent to comply with his demands.

19. I say that the plan of the applicant is to single out the present plot to fulfill the vested interest of the applicant Wadia as is evident from the fact that first Vanshakti filed its Application (no 100 of 2024) on 22.04.2024 and obtained Ex- Parte order on 10.05.2024 without serving this respondent. This was followed by an Application filed by Nusli. N. Wadia in his capacity as the sole administrator of Estate & effects of late Edulji Framroz Dinshaw being Application (No. 166 of 2024) on later date with similar issues. From chronology of filing the application and the content of both the applications, it is clear that the applicant Wadia is using the Government machinery to settle his personal vendetta against this respondent.

20. This Respondent says that considering the various orders passed by the Hon'ble High Court Bombay in Suit (Original Side) bearing No.1628/2008 by the Hon'ble Single Judge and Division Bench and the sequence of filing proceeding before this Hon'ble Tribunal by Vanshakti and Nusli Wadia will show that the entire object of filing proceeding is nothing but to stop this Respondent from carrying out development activities on the land which is subject matter of agreement between the Respondent and Nulsi Wadia who is Administrator of Estate of E.F.Dinshaw. It may be noted that, if, the Applicant claims that he is an activist and working for the protection of the environment for a long time, then, time for filing all these petitions will show that the petition is filed with an oblique motive. Admittedly, development work has been started from 1997 and the

Applicant cannot claim ignorance and in absence of any explanation or grounds made out the application filed by the Applicant before this Hon'ble Tribunal is barred by law of limitation. The Applicant has made various statements in his reply /rejoinder affidavit which are not factually correct. The Applicant even claims that this Tribunal shall read whatever is not stated in the report of the Committee appointed by this Hon'ble Tribunal. This Applicant wants to read and consider Nalla as river by saying that Marathi meaning of word 'Nalla' is 'river' which is not correct. This Respondent further says that even the Applicant wants to read certain facts which are not stated in the report saying that same may have inadvertently omitted in the report is not correct. It may be noted that entire pleading in the application and also affidavit in rejoinder filed in this petition by the Applicant is nothing but making one after other false statements and only with the intention to ask for relief preventing this Respondent to continue with its development activity. This Respondent says that the Applicant of this petition is making various statements against local body i.e. Mumbai Municipal Corporation, ESZ Committee and others without any base or facts on record.

21. The Applicant is aware of the fact that the Respondent is not doing any development activities without permission of concerned authority and concerned authorities are observing all the provisions of relevant laws, rules and Notification.

22. The Applicant further claims that this Respondent shall not be allowed to continue with the development activities till Zonal Master Plan is prepared and declared. It is submitted that either on the point of construction of road or claiming that no development work of any

kind can be allowed to carry out including putting road is neither legal nor proper.

23. Vanshakti through his Director Stalin who is the Applicant in this application claims that he is well versed with all relevant laws for filing proceedings before the Hon'ble Tribunal. In fact, he has filed earlier petition no.175/2015 against this Respondent and others and the same was withdrawn. This Hon'ble Tribunal by this order dtd.9/3/2013 observed that "Ld. Counsel appearing on behalf of Applicant seeks permission to withdraw the present application with leave to initiate proper proceedings for restoration of the environmental damage to hill cutting and deforestation of Dindoshi Hill and building construction at authorized land Yeoor Thane. The Applicant has also filed one application no.193/2016 challenging the final notification. Even though the Applicant claims to be acquainted with the entire facts of the subject matter of this application, he has not made Nusli Wadia Administrator of Estate of Late E.F.Dinshaw, hereinafter referred to be Administrator as a party to the petition. Vanshakti deliberately not added Administrator as a Party in the application so that the Administrator can file his own separate application on the identical issue which clearly shows that this malafides on behalf of the Applicant to help the Administrator.

24. In Para 6 of application before this Hon'ble Tribunal Applicant has stated that "with the subject matter of the said application no. 175/2015 was cast". The Hon'ble Tribunal vide order dtd. 9/3/2017 deem fit to grant liberty to Applicant to file fresh / separate application segregating issues relating to Yeoor Hill range and Dindoshi respectfully for proper adjudication of the same. This will show that the Applicant is giving its own version for the orders passed

by this Hon'ble Tribunal in application no.175/2015 (WZ) on 9/3/2017. This Applicant is in collusion with Administrator who is also as Applicant in the proceeding no. 166/2024. This Respondent says that for want of making the Administrator necessary party to present application, the present application is not maintainable.

25. Vanshakti through his Director Stalin who is the Applicant claims that he is well versed with all relevant laws for filing proceedings before the Hon'ble Tribunal. In fact, he has filed earlier petition no.175/2015 against this Respondent and others and the same was withdrawn. This Hon'ble Tribunal by its order observed that "Ld. Counsel appearing on behalf of Applicant seeks permission to withdraw the present application with leave to initiate proper proceedings for restoration of the environmental damage to hill cutting and deforestation of Dindoshi Hill and building construction at authorized land in Yeoor Thane. The Applicant has also filed one application no.193/2016 challenging the final notification. Even though the Applicant claims to be acquainted with the entire facts of the subject matter of this application, he has not made Nusli Wadia who is the Administrator of Estate of Late E.F.Dinshaw, hereinafter referred to be Administrator as a party to the petition. Vanshakti deliberately not added the Administrator as a Party in the application so that the Administrator can file his own separate application on the identical issue which clearly shows the malafides on behalf of the Applicant to help the Administrator.

26. In Para 6 of application before this Hon'ble Tribunal Applicant has stated that "with the subject matter of the said application no. 175/2015 was vast". The Hon'ble Tribunal vide order dtd. 9/3/2017 deem fit to grant liberty to Applicant to file fresh / separate

application segregating issues relating to Yeoor Hill range and Dindoshi respectfully for proper adjudication of the same. This will show that the Applicant is giving its own version for the orders passed by this Hon'ble Tribunal in application no.175/2015 (WZ) on 9/3/2017. This Applicant is in collusion with Administrator who is also the Applicant in the proceeding no. 166/2024. This Respondent says that for want of making the Administrator necessary party to present the application, the present application is not maintainable.

27. Prima facie, the application mainly comprises of three issues i.e. Hill Cutting, Tree Cutting & Obstruction of Nalla. However, the committee after due site inspection found no specific violations as per the report. Having not found anything, the committee has surprisingly focused on incidence which is 6 year back i.e. the fire incidence happened in the year 2018 which has already been dealt with by the Forest Office and Police Authorities. The Forest Department have already informed us vide their letter dated 19/01/2019 to adopt certain measures for prevention of fire in future.

28. It is therefore prayed that application may be rejected.

Whatever stated above is true and correct to the best of my knowledge, information and belief and in witness whereof I have signed this Affidavit.

Date: 23rd September 2024

Affiant

BEFORE ME

M. B. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

NOTED AND REGISTERED AT
SERIAL NUMBER 1316/24
23 SEP 2024

I know the Affiant

Advocate

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Annexure - R - 1

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.817 OF 2010
IN
NOTICE OF MOTION NO.1863 OF 2008
IN
SUIT NO.1628 OF 2008

Ferani Hotels Private Limited ..Appellant.
versus
Nusli Neville Wadia and others ..Respondents.

WITH

APPEAL NO.806 OF 2010
IN
NOTICE OF MOTION NO.1863 OF 2008
IN
SUIT NO.1628 OF 2008

Nusli Neville Wadia ..Appellant.
versus
Ferani Hotels Private Limited and others ..Respondents..

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Mr. Abhishek Singhvi, Senior Advocate with Mr. Parag Tripathi, Senior Advocate, Mr. Zubin Behramkamdin, Mr. Vivek A. Vashi, Ms. Kanika Sharma, Mr. Abhimanyu Bhandari, Mr. Mike Desai, Mr. Kunal Bahri and Mr. Rook Ray i/b M/s. Bharucha & Partners for the Appellant in Appeal 817 of 2010 and for Respondent No.1 in Appeal 806 of 2010.

Mr. F.S. Nariman, Senior Advocate with Mr. N.H. Seervai, Senior Advocate, Mr. R.M. Kadam, Senior Advocate, Mr. V.R. Dhond, Senior Advocate, Mr. Rohan Kelkar, Mr. Shrikant Doijode and Ms. Falguni Thakkar i/b Doijode Associates for Respondent No.1 in Appeal 817 of 2010 and for the Appellant in Appeal 806 of 2010.

Mr. Vineet B. Naik i/b Mahimtura & Co. for Respondent No.3 in both the Appeals.

Ms. Kashmira Bharucha i/b Mr. K.D. Abhichandani for Respondents 5 and 6.

Mr. Simil Purohit with Mr. Rahul Totala and Mr. Hiren G. Shah i/b Prakash & Co. for Respondents 8,9,11,14,15, 17, 18, 23, 28, 29, 30, 34 to 37 and 49.

Mr. N.K. Mudnaney for Respondents 10,13, 19 to 24 and 31.

Mr. S.U. Kamdar, Senior Advocate with Mr. Rajesh Vaidya i/b A.R. Vaidya & Co. for Respondents 12, 16, 25, 26, 27, 38 to 48.

Mr. Ameya Malkan i/b Wadia Ghandy & Co. for Respondents 32 and 33.

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NOTARY GOVERNMENT OF INDIA SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10604 EXPIRY DT. 24/10/2025

CORAM : DR.D.Y.CHANDRACHUD, and
R.D.DHANUKA, JJ.

19 July 2012.

ORAL JUDGMENT (PER DR.D.Y.CHANDRACHUD, J.) :

These Appeals arise from a judgment dated 19 July 2010 of a Learned Single Judge on a Motion for interim relief in a suit. When an application for ad interim relief came up for hearing before the Learned Single Judge, an objection to the maintainability of the suit was raised on behalf of the First Defendant on the ground that the claim was barred by limitation. The Learned Single Judge was requested to raise a preliminary issue under Section 9A of the Code of Civil Procedure, 1908. The Learned Judge accepted the contention that an issue under Section 9A would have to be raised. The Court held that no case for the grant of ad interim relief, within the meaning of Section 9A(2) was made out on the ground of delay. However, the Learned Single Judge proceeded to dispose of the Motion for interim relief on the ground that since affidavits have been filed and parties were heard at length, it would not be appropriate or proper to have a hearing confined only to the disposal of the application for ad interim relief. Two appeals have been filed in these proceedings. The first appeal is by Mr. Nusli Neville Wadia, the Plaintiff; while the second appeal is by Ferani Hotels Private Limited, the First Defendant. The suit has been instituted by the Plaintiff in his capacity as the administrator of the estate of Late E.F. Dinshaw. For convenience of reference and since there are two appeals, it would be appropriate to refer to the parties as the administrator and Ferani. Reference to the other Defendants would be made appropriately, as and when necessary.

2. The suit has been instituted, inter alia, to seek a declaration that an

agreement entered into between the administrator and Ferani on 2 January 1995 stands vitiated by fraud and has been duly determined with effect from 12 May 2008. Consequential reliefs have also been claimed to the effect that the powers of attorney executed by the Plaintiff stand validly revoked and that certain agreements entered into between Ferani and the other Defendants, including among them agreements which date back to 2001, 2002, 2003, 2004 and 2005, have been validly revoked. An injunction has been sought, restraining Ferani from carrying out any further construction on the lands which form the subject matter of the suit and to demolish the constructions which have been put up. There is a claim for damages in the amount of Rs.1,370.06 Crores. The lands which form the subject matter of the dispute aggregate to about 350 acres and are situated principally in Malad.

3. On 2 January 1995 an agreement was entered into between the administrator (representing the estate of E.F. Dinshaw) and Ferani, under which Ferani undertook the development of the land and the sale of constructed areas thereon subject to certain terms and conditions. The agreement envisaged that Ferani would develop the land by constructing buildings thereon. The administrator was to grant, in favour of Ferani, a lease in respect of the land. Clause 8 of the agreement stipulated thus :

"8. The Development Project contemplated by this Agreement, is the following :-

(a) Sale, or transfer by any other format, by the Company to third parties (hereinafter referred to as "the Purchasers" or prospective purchasers or Unit holders / flat holders, as the case maybe) either on outright sale basis or on "ownership basis", or otherwise, the different building/s to be so put up by the Company on the respective segments

(being building/s belonging to the Company) and/or of the flats/ shops/ offices and/or other portions of and/or Units in such buildings/s, so that ultimately the building/s that would be so constructed by the Company would be conveyed and transferred by the Company in favour of the respective purchaser/s or a Co-operative Society or Limited Company or a Condominium (as may be decided upon by the Company) to be formed of such prospective purchasers or Unit holders/ Flat holders/co-operative society or limited company so that such purchaser / organisation would then become the owner of such building/s."

4. Under the agreement the administrator was to be paid 12% of "all gross realizations from the disposal/ transfer (by any and all formats) as aforesaid". The minimum share of the administrator was to be Rs.75 Crores, payable within a period of ten years from the date of the agreement. The development of the immovable property was to be in the control of the members of the Raheja family including a corporate body under its control. The agreement envisaged that the administrator would continue to be in juridical possession of the land. The administrator was to transfer title and handover formal and juridical possession of the land to the purchasers of the building constructed by Ferani. Clause 15 of the agreement stipulated that Ferani would be dealing with "outsiders/third parties on principal to principal basis" and the relationship between the parties would not be in the nature of a partnership and/or an association of persons. Clause 16(a) of the agreement provided that neither party shall be entitled to terminate or resile from the agreement or their obligations thereunder, the intention of the parties being that the agreement would be operative till the time that the entire development project was complete and a sale / transfer as contemplated had taken place. Ferani was required to furnish to the administrator a statement of accounts at monthly intervals in order to establish

that his 12% share was paid into a designated bank account simultaneously with the receipt by Ferani of its 88% share. An annual audit was to be carried out by C.C. Chokhsi & Co. Chartered Accountants, with a view to ensure that the administrator had received his 12% share in the designated bank account. Under clause 17(a) of the agreement the administrator was required to execute powers of attorney in favour of the Third and Fourth Defendants, who are representatives of Ferani, inter alia, authorizing them to get plans sanctioned, enter into agreements with flat purchasers and to arrange for the receipt and payment of the share of the administrator in the gross consideration.

5. Pursuant to the agreement the administrator executed powers of attorney on 2 January 1995. Parties entered into a supplemental agreement on 12 April 1995 providing a time frame for the realization of the minimum guaranteed share of Rs.75 Crores that was assured to the administrator. Between 1995 and 1999, no development work was carried out, as a result of which the minimum guaranteed amount was remitted to the administrator as provided in the agreement between the parties.

6. The record would indicate that disputes arose between the parties as early as in April 2000. On 4/11 April 2000, Ferani informed the administrator that from 21 March 2000 it had deposited in the designated bank account an aggregate sum of Rs.75.79 lakhs representing the 12% share of the administrator under clause 12(a) of the agreement, out of the gross receipts / realization in respect of 56 flats in a proposed building to be constructed by Ferani on the suit land. This building was alleged to have been sold by Ferani to

NOTARY SUDHIR RAWAL THANE

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the Fifth Defendant, which according to the Plaintiff is a group company of the Raheja family. On 16 May 2000, a reply was addressed by the administrator to Ferani specifically drawing attention to the fact that clause 8(a) of the agreement contemplated a sale or transfer of flats to third parties. The administrator contended that the sales of the flats in question were not genuine sales and that consequently the obligation to deposit 12% of the sale values would not be taken as having been fulfilled. In the circumstances, Ferani was called upon to disclose "the ultimate genuine sale" made by the sister and associated companies of Ferani to third parties to whom the flats were allegedly sold at a notional value. The amount paid towards the share of the administrator, it was stated, would be treated as an on account payment to be finally adjusted against "genuine sales".

7. On 9 June 2000, Ferani addressed a communication to the administrator accepting that the Fifth Defendant was a "sister concern", but claimed that it had a separate entity and was a third party within the meaning of clause 8(a) of the agreement. According to Ferani the sale price which is reflected in the transaction (Rs.1,510/- per sq. ft.) was the rate at which the premises under sale were capable of realizing in the then market conditions. Nonetheless an offer was made by Ferani to the administrator that it would be willing to sell to the administrator or his nominees, within thirty days, 56 similar flats at the rate of Rs.1,510/- per sq. ft. on the same terms and conditions of sale as applicable to the Fifth Defendant. During the course of the development of the lands, nearly 19 meetings took place between the parties. The record would indicate that the administrator had a serious grievance that Ferani had entered into transactions for the sale of constructed premises to third parties who were alleged to be

companies forming part of the Raheja group. Whether there is prima facie merit in that allegation would be considered for the purposes of the present appeals. But, at this stage, it would be necessary to note that from time to time C.C. Chokshi and Company, who were nominated as auditors under the agreement, certified during the course of audit that Defendants 1 to 4 had stated that none of the flats or units had been sold to related parties or to sister or associated concerns of Ferani.

8. On 12 May 2008, the agreement was determined by notice on the ground that by purporting to sell the units in the completed buildings and in partially constructed buildings to their own nominees, Defendants 1 to 4 had acted fraudulently in breach of their fiduciary duty and of the express terms and conditions of the agreement. The administrator alleged that Defendants 1 to 4 had repudiated their obligation under the agreement. The suit was instituted on 13 May 2008.

9. On 30 May 2008 a Motion for interlocutory relief was taken out by the administrator. Between 22 July 2008 and February 2010 several letters were addressed by the administrator to various authorities, including the Sub-Registrar of Assurances and the Municipal Corporation, either to stop the registration of documents or the grant of building permissions. On 20 October 2009 and 23 December 2009, the Municipal Corporation stated that since there was no injunction or order of restraint of any Court, the request made by the administrator could not be acceded to. The Motion was moved before the Learned Single Judge for ad interim relief for the first time on 3 March 2010,

nearly 21 months after the suit was instituted. On behalf of Ferani an adjournment was sought to file an affidavit in reply. In the affidavit filed by Ferani to oppose the application for ad interim relief, an objection was raised to the maintainability of the suit on the ground that the claim was barred by limitation. The Learned Trial Judge was requested to frame a preliminary issue on the question of limitation under Section 9A of the Code of Civil Procedure, 1908. The Motion was listed before the Learned Single Judge on 16 June 2010 for ad interim relief.

10. By a judgment dated 19 July 2010 the Learned Single Judge held that :-

(i) No case for the grant of ad interim relief was made out having regard to the delay on the part of the Plaintiff, the administrator, in moving the Court;

(ii) A preliminary issue under Section 9A would have to be framed;

(iii) Since submissions have been heard at length following the filing of affidavits, the entirety of the Motion for interim relief would have to be disposed of.

Accordingly the Learned Single Judge issued a direction to the effect that Ferani shall not put any party, either a genuine third party or any related party including the other Defendants to the suit, in possession of any constructed premises except with the approval of the Plaintiff, pending the suit. The Learned Single Judge, however, excluded from the operation of the order Kotak Mahindra Bank Limited in the building constructed for them by Ferani under certain agreements dated 15 December 2006. The Motion was disposed of. The Learned Single

Judge had stayed the operation of the order for a period of two weeks. The order passed by the Learned Single Judge was stayed by a Division Bench of this Court on 26 July 2010.

11. Before we deal with the issues which arose before the Learned Trial Judge, prima facie, on the merits of the dispute it will be necessary for the Court to consider the ambit of the provisions of Section 9A of the Code of Civil Procedure, 1908. As we have noted, at the hearing of the application for ad interim relief, an objection was raised by the First Defendant to the maintainability of the suit on the ground that the claim was barred by limitation. While the Learned Single Judge has directed that a preliminary issue on the ground of limitation would have to be framed under Section 9A, the impugned order proceeds to dispose of completely the Motion for interim relief. Whether such a course of action is permissible in law would fall for determination in the first instance.

12. Section 9A was introduced in the Code by a Maharashtra Amendment[1]. Section 9A provides as follows :

> "9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue –
>
> (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the

1 Act 65 of 1977 with effect from 19 December 1977.

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hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."

13. At the outset it will be necessary to note that insofar as this Court is concerned, it is common ground that the following two positions in law are settled :-

(i) Whether a plea of limitation as a bar to the Court entertaining the entire suit can be raised as an issue of jurisdiction under Section 9A is concluded by the following judgments :

(a) **Foreshore Co-operative Housing Society Limited v. Praveen Desai**[2];

(b) **Royal Palms (India) Pvt. Ltd. v. Bharat Shantilal Shah**[3];

(c) **Mukund Ltd. v. Mumbai International Airport**[4];

(d) **Jagshi Shah v. Shaan Builders**[5].

(ii) Whether Section 9A is inconsistent with the provisions of Order 14 Rule 2 and will therefore stand repealed by Section 16 of the Code of Civil Procedure Amendment Act 2002 is concluded by the following decisions :

(a) **Satpuda Tapi Parisar Sahakari Sakhar Karkhana Ltd. v. Jagruti**

2 2006(6) Bom CR 230 (Single Judge) and 2009(1) Bom CR 757 (DB).
3 (2009) 2 Bom CR 622 (DB).
4 2011(2) MLJ 936 (DB).
5 (2012) 3 Bom CR 770 (DB).

Industries[6];

(b) **Foreshore Co-operative Housing Society Limited v. Praveen Desai**[7].

14. The Court has been informed during the course of the submissions by learned Senior Counsel appearing on behalf of the administrator that the judgment of this Court in **Foreshore Co-operative Housing Society** was carried in appeal to the Supreme Court both on the point as to whether limitation can be raised as a jurisdictional issue under Section 9A and on whether Section 9A is inconsistent with Order 14 Rule 2. A Special Leave Petition has been admitted by the Supreme Court by an order dated 6 September 2011. The administrator has made a statement before this Court that on this issue, he wishes to canvas the correctness of the view on both these facets before the Supreme Court. Fairly, however, there is no dispute about the position in law that on both these aspects, the law stands concluded insofar as this Court is concerned.

15. The genesis of Section 9A originates in a decision of this Court in **Institute Indo-Portuguese v. Dr. T. Borges**[8] in which it was held by this Court that the Bombay City Civil Court was not required for the purposes of granting interim relief to enquire into the question of jurisdiction. The legislature intervened by amending the Code in 1977 on the ground that the practice of granting injunctions without going into the question of jurisdiction, even though raised had led to grave abuse. The object of the amendment was to provide

6 2008(5) Bom CR 284 (Aurangabad Bench).
7 2009(1) Bom CR 757 (DB).
8 (1958) 60 Bom L.R. 660.

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that when a question of jurisdiction was raised at the hearing of an application for granting or setting aside an order granting interim relief, the Court shall determine that question first. In **Tayabbhai M. Bagasarwalla v. Hind Rubber Industries Private Limited**[9], the Supreme Court held that when an objection to jurisdiction of the Court is raised at the hearing of an application for the grant of or vacating interim relief "the Court should determine that issue in the first instance as a preliminary issue before granting or setting aside the relief already granted". However, sub section (2) of Section 9A does not preclude the Court from granting such interim relief as it may consider necessary pending the decision on the question of jurisdiction. The judgment of the Supreme Court indicates, that merely because an objection to jurisdiction is raised, "the Court does not become helpless forthwith – nor does it become incompetent to grant the interim relief". At the same time the objection to jurisdiction has to be determined at the earliest possible moment. Following the decision of the Supreme Court in **Bagasarwalla**, several judgments of this Court have elucidated upon the ambit and scope of Section 9A. These include judgments of the Division Benches in :-

(i) **Meher Singh v. Deepak Sawhny**[10];

(ii) **Smithkline Beecham Consumer Healthcare BMBH v. Hindustan Lever Limited**[11];

(iii) **Foreshore Co-operative Housing Society Ltd. v. Praveen Desai**[12];

(iv) **Royal Palms (India) Pvt. Ltd. v. Bharat Shantilal Shah**[13];

(v) **Mukund Limited v. Mumbai International Airport**[14];

9 (1997) 3 SCC 443.
10 1999(1) Bom. C.R. 107
11 2003 Vol.105(2) Bom.L.R. 547.
12 2009(2) Mh. L.J.28.
13 2009(2) Bom.C.R. 622.
14 2011(2) Mh.L.J. 936.

(vi) **Associated Bombay Cinemas Private Limited v. Jamni S. Ramchandani[15].**

16. The principles which emerge from these decisions can be formulated thus:

(i) The provisions of Section 9A are mandatory. Where at the hearing of an application for granting or setting aside an order granting interim relief in a suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties, the Court shall proceed to determine at the hearing of the application the issue as to jurisdiction as a preliminary issue before granting or setting aside the order granting interim relief. Such an application cannot be adjourned to the hearing of the suit and must be disposed of expeditiously;

(ii) Though the application for the grant of interim relief or, as the case may be, for setting aside an order granting interim relief cannot be disposed of before a decision on the preliminary issue as to jurisdiction, the Court may nonetheless grant such interim reliefs as it may consider necessary pending the determination by it of the preliminary issue as to jurisdiction;

(iii) Once the issue of jurisdiction is required to be decided as a preliminary issue, notwithstanding anything contained in the Code, including Order 14 Rule 2, it has to be determined after adjudication which would require parties being given an opportunity to lead evidence. The decision by the Court of the preliminary issue is not merely a prima facie determination for the purposes of the application

15 2011 Vol. 113(2) Bom.L.R. 829.

for interim relief, but is a final determination of the issue of jurisdiction which the provision mandates must be heard and disposed of first as a preliminary issue. It is only upon the disposal of the preliminary issue of jurisdiction, that the Court can then take up the final disposal of the application for interim relief;

(iv) The first part of Section 9A refers to the stage at which the objection is taken, the stage being at the hearing of an application for granting or setting aside an order granting interim relief. The second part of the provision elucidates the nature of the objection, the objection being to the jurisdiction of the Court to entertain such a suit;

(v) Following the judgment of the Constitution Bench of the Supreme Court in **Pandurang D. Chougule v. Maruti H. Jadhav**[16], which held that it is well settled that a plea of limitation is a plea which concerns the jurisdiction of the Court which tries the proceedings and that a finding on the plea in favour of a party raising it would oust the jurisdiction of the Court, the Division Bench in **Foreshore Co-operative Housing Society Limited** (supra) held that the question of limitation would constitute a question of jurisdiction within the meaning of Section 9A. The decision in **Foreshore Co-operative Housing Society** has been followed by a Division Bench in **Royal Palms, Mukund** and **Associated Bombay Cinemas** (supra).

17. But, the submission which has been urged on behalf of the administrator by learned Senior Counsel is twofold. Firstly, it has been submitted that an objection, as to jurisdiction, of the nature that is contemplated by sub section (1)

16 AIR 1966 SC 153.

of Section 9A is an objection which must be capable of disposing of the entirety of the suit if it is upheld. In the present case, it has been submitted that several transactions between the parties which are sought to be rescinded have admittedly taken place within a period of three years of the date of the institution of the suit and those in any event would be within limitation. Consequently, it was submitted that even if the objection that has been raised by Ferani were to be upheld upon adjudication, that would result in only a part of the claim being held to be barred by limitation. The administrator does not concede at this stage that any part of the claim is barred by limitation. But, even if the submissions of Ferani were to be upheld, that would not result in the rejection of the suit in its entirety. Section 9A, it was urged, would not apply to this situation. Secondly, it is urged that sub section (1) of Section 9A does not oust the authority of the Court to consider atleast at the threshold whether the objection as to jurisdiction has some substance or justification. In other words, it was urged that an objection as to jurisdiction does not mandate that the Court must in every instance frame a preliminary issue and if such a construction were to be placed, it would be susceptible to grave abuse.

18. We would take up the second part of the submission in the first instance. The object and purpose of the legislature in introducing Section 9A was to obviate an abuse of process on the part of the Plaintiff. The statement of objects and reasons underlying the amendment makes it abundantly clear that the legislature had in mind a situation where a practice had grown in the City Civil Court of applications for interim relief being entertained while a hearing on an objection as to jurisdiction was postponed until that determination took place.

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This practice finds support in a judgment of this Court in **Institute Indo-Portuguese** which had indicated that it was not necessary for the Trial Judge to postpone the hearing of an application for interlocutory relief until the question of jurisdiction was resolved. Evidently, the object of the State legislature in introducing the provisions of Section 9A was to ensure that when an objection on the ground of jurisdiction is raised, that must be addressed first before an application for interlocutory relief is finally disposed of. Nonetheless the legislature balanced the claim of a Plaintiff to have access to some interlocutory protection. Sub section (2) of Section 9A empowers the Trial Judge to grant interim protection until the question of jurisdiction is finally resolved. Though the object of the legislature was thus to protect against an abuse of process on the part of the Plaintiffs, experience of Trial Judges in this Court would be suggestive of the fact that in certain cases the provision can be capable of being abused by a Defendant. A Defendant may conceivably raise an objection as to jurisdiction merely with a view to delay the final disposal of a Motion for interim relief, cognizant of the fact that an ad interim application of the kind which is contemplated under sub section (2) of Section 9A may not in a given situation result in the grant of wide ranging interim reliefs of the kind that may be sought by a Plaintiff. We are not inclined to enter a finding that such is the case in the present case. For, as we would indicate prima facie, the objection as to jurisdiction here cannot by any means be regarded as being frivolous or lacking in bonafides. But, the possibility of an abuse by the Defendants, which the practical unfolding of the provision of Section 9A indicates, in the experience of the Trial Judges of this Court, would emphasize the necessity of allowing a modicum of discretion on the part of the Trial Judge while dealing with an

application for the raising of a preliminary issue under Section 9A. The judgment of the Supreme Court in **Bagasarwalla's** case provides some element of guidance when the Supreme Court notes that the Trial Judge is not helpless merely because a preliminary issue is sought to be raised under Section 9A. We are of the view that in order to ensure that Section 9A is not susceptible to grave abuse at the behest of an unscrupulous Defendant, it would be within the jurisdiction and authority of the Trial Judge to consider as to whether the objection as to jurisdiction arises bonafide or whether it is wholly frivolous. Undoubtedly, this would contemplate only a minimal enquiry by the Court, since if at that stage a comprehensive adjudication were to be contemplated, that would virtually defeat the provisions of Section 9A. The provisions of Section 9A therefore would not be inconsistent with the Trial Judge exercising a minimal enquiry at the very threshold to satisfy the conscience of the Court that the objection of jurisdiction has been raised bonafide and is not a frivolous or irrelevant exercise meant only to delay or defeat the process of the Court.

19. On the first leg of the submission it has been urged before the Court by learned Senior Counsel that Section 9A uses the expression "to entertain such a suit". Based on this, it was submitted that an objection to the jurisdiction of the Court must be to the entertainment of a suit in its entirety. In other words, the submission is that where an objection as to jurisdiction could not result in the complete disposal of the suit, in the event that it is upheld, the issue as to jurisdiction need not be framed as a preliminary issue.

20. At the outset, when we consider the submission it would be necessary to

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note that a restriction of the kind that is suggested on behalf of the administrator is not contained in the plain terms of Section 9A. The first part of Section 9A(1) makes a reference to the stage at which the objection is raised while the second part adverts to the nature of the objection. The nature of the objection is that it has to be "an objection to the jurisdiction of the Court to entertain such a suit". An objection to jurisdiction may in a certain conceivable situation be to the jurisdiction of the Court to entertain the suit in its entirety as for instance, where the Court lacks the jurisdiction to entertain the subject matter of the suit on the ground that properly construed the suit relates to the relationship of a lessor and lessee falling within the exclusive domain of the Small Causes Court in the city of Mumbai. Alternately, the objection may be to the lack of territorial jurisdiction or on the ground of a lack of pecuniary jurisdiction. Equally an objection as to jurisdiction can well be in respect of a part of the cause of action which is set up in the suit. For instance, even on the issue of territorial jurisdiction, a part of the cause of action may fall within the jurisdiction of the Court, while another part may fall outside. An illustration of that nature is to be found in the judgment of the Supreme Court in **Sandeep Polymers (P) Ltd. v Bajaj Auto Ltd.**[17]. The significant aspect is that if an objection to the jurisdiction of the Court to entertain a part of the cause of action which is set up in the suit is raised and sustained, that part of the cause of action would fall outside the scope of adjudication in the suit before the Court before which the objection is raised. The object of the legislature was to preclude the Plaintiff from pursuing an application for interlocutory relief though the claim on the basis of which the application is founded falls outside jurisdiction. This rationale would be relevant both to a situation where the entirety of the claim lies outside the jurisdiction of the Court

17 (2007) 7 SCC 148.

as well as in a situation where a part of the cause of action is outside the jurisdiction, though the rest falls within. An objection as to the jurisdiction of the Court "to entertain such a suit" must bear its natural and ordinary connotation which would mean an objection to the jurisdiction of a Court to entertain even a part of the cause of action raised in a suit. For this Court to hold that Section 9A would not apply in a situation where the objection of jurisdiction would not result in the disposal of the entire suit, even if it were to be upheld would be to introduce a condition which has not been imposed by the legislature. In the course of interpreting Section 9A, it would not be open to this Court either to rewrite the provision or to introduce a condition which the legislature has not found it fit to impose. If as a result of the experience which has been gained over the years on the practical working of the statutory provision, an amendment to the provision is necessitated, the remedy would not lie before this Court, but before the legislature which must consider a possible amendment.

21 In the view which we have taken, we would have to determine as to whether consistent with the minimal enquiry that we have contemplated, the Learned Single Judge was justified in directing that the issue of limitation should be raised as a preliminary issue consistent with the provisions of Section 9A. The objection as to jurisdiction has been raised in the affidavit filed on behalf of the First Defendant on 12 March 2010. Paragraph 4 of the affidavit contains a specific submission that the suit is barred by limitation and that this issue should be raised and decided as a preliminary issue under Section 9A. In paragraphs 10.1 to 10.8 and in paragraph 11 the First Defendant has set up the basis on which the plea of limitation has been raised. According to the First Defendant on

11 April 2000 the administrator was informed that 56 flats in Building No.4 had been sold and the Plaintiffs' share of 12% had been banked in the designated bank account. On 16 May 2000, the administrator raised an objection on the ground that the Fifth Defendant to whom the sale was made was not a third party and was an associated company. In response, the First Defendant by its reply dated 9 June 2000 stated that though the Fifth Defendant was a sister concern, it was a separate legal entity and therefore a third party within the meaning of clause 8(a). In addition, the First Defendant offered to sell an equal number of flats to the Plaintiff at the same rate and on the same terms and conditions. Subsequently, on 5 April 2002, the administrator was informed of the sale by the First Defendant to the Sixth Defendant, another sister concern of three units in Building M on C.T.S. 1406A/3/8. On 23 April 2002, the Plaintiff raised an objection to the sale on the ground that this was not a genuine sale to a third party. By a communication dated 2 May 2002 the First Defendant informed the Plaintiff that the sale was a genuine sale in respect of which Form 37-I had been filed with the Income Tax Department. The contention of the First Defendant is that between 2000-2002 the Plaintiff was aware of the position of the First Defendant that although the Fifth and Sixth Defendants were associated companies, being independent legal entities, they were a third party within the meaning of the agreement. According to the First Defendant the sales made to Defendants 8 to 49 were third party sales and the claim was barred by limitation. As regards the negotiation letters which were sought to be revoked as part of the reliefs claimed in the suit, it has been submitted that those letters date between 30 March 2001 and 4 April 2005, besides which there were other agreements between April 2005 and March 2006. In our view, having due regard to the

nature and basis of the objection, it cannot be asserted that the claim as to limitation is frivolous or that it was lacking in bonafides.

22. The Learned Single Judge was in these circumstances justified and as a matter of fact Section 9A(1) obligated the Court to raise an issue of jurisdiction to be tried as a preliminary issue. Having decided to raise the issue of limitation as a preliminary issue, the Learned Single Judge was of the view that no case for the grant of ad interim relief was made out. The basis of this determination is contained in paragraphs 71 and 72 of the impugned order. The Learned Single Judge has noted that the administrator had atleast suspected some fraud, if any, committed by Ferani by appointing its nominees or related companies, since May 2000. A grievance was again made in April 2002. According to the Learned Single Judge, the Plaint itself shows that the entire fraud was brought to light in May 2005. Though the administrator sued in May 2008, no application for the grant of ad interim relief was made until February 2010. For these reasons, the Learned Judge held that it would be impossible to grant ad interim relief to the Plaintiff after the lapse of the years that have passed. But the Learned Single Judge proceeded to dispose of the Motion for interim relief on the ground that after detailed arguments were addressed and the material on the record had been considered, it would be an abuse of the process of the Court to allow parties to argue only an application for ad interim relief. It was on this basis that the Learned Judge proceeded to dispose of the Motion in its entirety. We find considerable merit in the submission that the impugned order of the Learned Single Judge insofar as it disposes of the application for interim relief finally is unsustainable. Once the Motion for interim relief stands disposed of, the issue

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which the Learned Single Judge has framed would cease to be a preliminary issue because then it would partake of the character of an issue which would fall for determination under Order 14 Rules 1 and 2. What the legislature has contemplated is that an issue of jurisdiction has to be disposed of first before the interlocutory application can be disposed of finally. Disposing of the Motion finally without the issue of jurisdiction being resolved, would clearly be in the teeth of the provisions of Section 9A(1). Section 9A(1) clearly mandates that the issue of jurisdiction cannot be relegated to the stage of the hearing of the suit. Moreover, that issue has to be decided before the application for interlocutory relief can be finally disposed of. In these circumstances, we are of the view that the order of the Learned Single Judge disposing of the Motion finally is unsustainable and would to that extent has to be set aside. Consistent with the provisions of Section 9A(1) which require the raising of the issue of jurisdiction as a preliminary issue, the Learned Single Judge would have been within jurisdiction in entertaining an application for ad interim relief within the meaning of sub section (2) of Section 9A. The hearing of the Motion for interim relief would have to be taken up after the determination of the preliminary issue under Section 9A.

23. That leads the Court to the issue as to whether the grant of any ad interim relief is warranted. As we have noted earlier, the final relief that the Learned Single Judge has granted is not an ad interim order within the meaning of Section 9A(2), but a final order on the Notice of Motion. The Learned Single Judge was of the view that no case for the grant of ad interim relief was made out. That is the matter which now falls for the determination of the Court.

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24. The substratum of the case of the Plaintiff is on the allegation of fraud. The allegation of fraud can for the purposes of elucidation be broadly distributed into four heads as pleaded in the plaint:-

(i) Defendants 1 to 4 have transacted with themselves through the device of front / nominee companies. This allegation of fraud involves Defendants 8 to 13, 16-17, 19-30 and 32-49. According to the Plaintiff for each of the financial years in which minimum guaranteed amounts were to be paid, a cluster of companies was incorporated at the behest of Ferani / the Rahejas just prior to the dates of the transactions in question. Most of the companies, it was alleged, had common directors, auditors, addresses or witnesses to their Memoranda and Articles of Association. The companies had almost identical paid up capitals of Rs.1 lac or Rs.1.5 lacs in most cases. Despite the limited capital and recent incorporation, the companies were projected as having entered into transactions with Ferani involving several crores of rupees. All the transactions were allegedly in the form of negotiation letters which provided for similar terms of payment including rates. The initial amounts which the companies paid were alleged to be financed by unsecured loans principally from the Seventh Defendant which is stated to be a partnership firm of the Raheja family. According to the Plaintiff, the fact that Defendants 8 to 49 were actually related or that they were nominees of the First Defendant or the Rahejas was a fact which was not disclosed to the auditors, C.C. Chokshi & Co. appointed under clause 16(g) of the

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development agreement. The auditors, as the administrator points out, were informed by Ferani that none of the sales to Defendants 8 to 49 were sales to related persons or nominees of Ferani.;

(ii) The second allegation of fraud involves two negotiation letters with front / nominee companies viz. Defendants 14 and 15. According to the Plaintiff in pursuance of these negotiation letters, Ferani purported to sell identified areas to its front companies at a stated price. These negotiation letters contain an apparently innocuous clause stating that in the event that there was an increase or decrease in the areas, the consideration would be proportionately adjusted. The administrator was paid his share of consideration stated in the initial letters of negotiation of 2002. Subsequently, when the copies of the negotiation letters of May 2005 were forwarded to the administrator, he realized that although the area was much higher, the rate was the same. The allegation is that by adopting this modus operandi, the administrator was deprived of his share of 12% of the genuine consideration;

(iii) The third allegation of fraud is that the First Defendant entered into leave and licence agreements with Defendant No.31 dated 21 November 2003 in respect of areas yet to be transacted under which it would take a substantial deposit and licence fee from the licensee. The leave and licence agreement was disclosed to the administrator only under a letter dated 5 April 2005 and 12% of the deposit amount or of the licence fee was not shared with him at all. Thereafter, according to the administrator, the areas with the licensee were transacted with Defendant No.31 which is an associated concern of

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the Raheja group and the deposit was transferred to it. The administrator objected to this transaction on 2 June 2005;

(iv) The fourth allegation is that a transaction was entered into on 15 December 2007 by Ferani with the Kotak group, involving two separate agreements, one of which was disclosed and the other was concealed. According to the Plaintiff, the actual purchase consideration was split into two agreements, one for the building and the second for amenities such as aluminum cladding. Both the agreements were entered into on the same day and the consideration was split up approximately in the ratio of 85 : 15. The administrator was paid his share only under the first agreement. On obtaining knowledge of the transaction, the administrator wrote to Kotak on 24 February 2008. It was only after the filing of the suit, since the no objection of the administrator was required for the handing over of possession of Building 21 to Kotak, that Kotak paid up and permission was granted. Moreover, it has been submitted that in certain instances, the premises which form the subject matter of certain transactions were never in fact constructed.

25. On behalf of Ferani, it was sought to be urged by learned Senior Counsel that :-

(i) Clause 8(a) of the agreement does not prohibit a sale to a sister concern; and

(ii) So long as the party with whom a transaction was entered into was not a party to the contract, the sale would be to a third party within the meaning

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of clause 8(a) of the agreement.

Learned Senior Counsel submitted that Ferani has made full disclosures of all transactions and in the absence of any misrepresentation, the allegation of fraud is misconceived. It has been urged that the essence of the development agreement, especially under clause 8(a), was that the administrator would receive 12% of the gross consideration on all sales. It has been submitted that the purchaser to whom the sale has been made is irrelevant, so long as it is made to a "third party" who is not a signatory to the development agreement. Learned Counsel urged that the test is not the identity of the third party, but the genuineness of consideration. It has been urged that the plaintiff has not produced any material to support the allegation regarding inadequacy of consideration. It is urged that the Single Judge rightly held that the issues in dispute would be a matter of accounts. It has been urged that monthly intimation letters were addressed to the plaintiff, in relation to all transactions, between 2000 and 2006 and no objections were forthcoming, on the consideration for the transactions. The fact that the auditors, who were nominees of the administrator did not dispute the accounts rendered with relation to the transactions dispels any allegation of fraud. Learned Senior Counsel submitted that, barring one case, no member of the Raheja family is a director / shareholder / investor in any of the companies. It has been further submitted that out of the 44 transactions that have been challenged, 34 are barred by limitation. It has also been urged that of the 10 transactions that are not allegedly barred by limitation, several are with companies which involve independent third party investors, and that no member of the Raheja family is a

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director or shareholder in any of the buyer companies in these transactions. Further, in 8 or 9 transactions, the third party concerned, involved a relative of the spouse of a daughter of the Raheja family in the capacity as director / shareholder / investor, none of which could be said to be a party related to Ferani.

26. Clause 8(a) of the agreement provides that the development project contemplated by the agreement would involve the sale or transfer by any other format by Ferani to third parties either on an outright sale basis or ownership basis or otherwise, of the buildings which were to be constructed by Ferani. When the parties referred to third parties in clause 8(a), there was a business understanding which was reflected in the words of the document. The duty of the Court while interpreting a commercial document must be to give a business meaning to the words used. When parties referred to transfers to third parties, evidently they had an intent that the transactions would be arms length transactions. Evidently, the consideration that was payable to the administrator representing 12% of the gross consideration would depend upon the transactions which Ferani entered into with these third parties. The basis of the expression 'third parties' in clause 8(a) must therefore be understood as conveying an intent of the parties to the effect that these transactions would be transactions with genuine purchasers. For it was on the foundation of a genuine transaction that the consideration representing 12% of the share of the administrator would have to be worked out. Even if learned Senior Counsel appearing on behalf of Ferani is held to be justified in submitting that the agreement does not expressly prohibit a transaction with a party other than a

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signatory to the contract, nonetheless there can be no gainsaying fact that the assurance that was meted out to the administrator was that he would be entitled to a certain share of the total consideration. The share of the administrator could be worked out on the basis of a bonafide sale in favour of a third party. Therefore, prima facie we are not inclined to accept the construction which has been sought to be placed on behalf of Ferani on clause 8(a) of the agreement. Undoubtedly, clause 15 of the agreement only contains a statement to the effect that while the administrator and Ferani would be dealing with outsiders / third parties, they would not be construed as having entered into a partnership or an association of persons.

27. In construing the manner in which parties understood clause 8(a), regard must be had to the contemporaneous conduct. On 5 April 2002 Ferani informed the administrator of the receipt of an amount of Rs.1.85 Crores for the sale on partnership basis of units in Building M. The sale was in favour of the Sixth Defendant, Palm Grove Beach Hotels Pvt. Ltd, which was stated to be a group company. On 23 April 2002, in a letter addressed on behalf of the administrator to Ferani, it was contended that Palm Grove Beach Hotels Pvt. Limited was not a third party within the meaning of clause 8(a) of the agreement and that the sale was not a genuine sale. In response Ferani by its letter dated 2 May 2002 stated thus :

> "For all practical purposes the sale to Palm Grove Beach Hotels Pvt. Ltd. has to be treated as the sale to a "third party" as the sale has been done to Palm Grove Beach Hotels Pvt. Ltd. for its business purposes. In the circumstances aforesaid the above sale has to be treated as a "genuine sale" and you cannot treat it as "on account payment" to be finally adjusted against the genuine sale effected by Palm Grove Beach Hotels

Pvt. Ltd. Hence this is genuine sale and the payment of 12% of the sale contribution by them to you must be taken as fulfillment of our obligation."

28. Ferani therefore clearly sought to justify the sale to the Sixth Defendant as a genuine sale. Evidently therefore it was within the contemplation of parties that a sale in favour of a third party within the meaning of clause 8(a) must be a genuine sale. Moreover, the auditors, C.C.Chokshi & Co. certified on nearly 11 occasions, that they were informed by Defendants 1 to 4 that none of the sales or transactions involved related or associated companies. If the submission which has now been sought to be urged reflected the understanding of Ferani at the relevant time, they would have only informed the auditors that the issue as to whether the sales were to a related or associated company was irrelevant because in their construction, a third party would mean an entity which was not a party to the contract. Evidently that was not the understanding of either of the parties at the relevant point in time.

29. The basis and foundation of the claim which has been made by the administrator is that the transactions which were put into place by Ferani were motivated by the object of diluting the consideration of 12% that was liable to be paid under the terms of the agreement. During the course of the hearing, we enquired with Learned Senior Counsel appearing for the administrator as to whether there is any material on the record that would indicate that the sales to Defendants 8 to 49 were not reflective of the true market value that prevailed at the relevant point in time. At this stage, it may be noted that there is no material on the record on the basis of which the Court can conclude prima facie that the sales in favour of Defendants 8 to 49 did not reflect the true or correct market

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value. Whether the sales at the material time did or did not accord with the prevailing market value for the properties which were put up for sale is essentially a matter of evidence and cannot be decided a priori on the basis of affidavits. During the course of the submissions, learned Senior Counsel appearing on behalf of Ferani has placed on the record charts, reflective of the position as it stood during the period when the provisions of Section 37-I of the Income tax Act 1961 were in operation and subsequent thereto when those provisions ceased to apply. On the basis of those charts, it has been sought to be urged that the transactions which have been challenged by the administrator are in several cases at rates which are much higher than those transactions which have been accepted by the administrator. In response, the submission which has been urged on behalf of the administrator is that the transactions which have been accepted by him were transactions with genuine third parties which he had no locus to question under the terms of the agreement. In rejoinder and towards conclusion of the submissions, a computation has been tendered on behalf of the administrator to the Court on the basis of the rates as contained in the ready reckoner with a view to urge that the rates at which Ferani transacted were lower than the rates which were prevailing in the ready reckoner. We find merit in the submission which has been urged on behalf of Ferani that it would be inappropriate for this Court, sitting in appeal, to allow such material to be adduced for the first time, absent such a submission being urged before the Learned Single Judge and particularly in the absence of either pleadings or underlying material to document the submission. This is evidently a matter which must be deferred to a closer consideration, when the hearing of the application for interim relief in the Notice of Motion can be taken up.

30. In pursuance of the agreement that was entered into between the parties on 2 January 1995, development has proceeded. During the course of the hearing, it has emerged before the Court that there have been nearly 1600 transactions comprising both of residential and commercial properties of which 144 are commercial transactions. The administrator has challenged 44 of the commercial transactions. The Court has been informed that there is no dispute in regard to the rates at which the transactions relating to the residential properties have taken place. On behalf of Ferani, it has been submitted that out of the 44 transactions pertaining to commercial properties that have been challenged by the administrator, 41 involved registered sale deeds, where possession has already been handed over to third parties. 34 out of the 44 transactions, it has been urged, have taken place beyond a period of three years prior to the institution of the suit and would be barred by limitation.

31. One glaring factor which must weigh with the Court in the present case is the element of delay on the part of the administrator in moving the Court. The delay on the part of the administrator must be considered from the perspective of two periods : (i) the period between the date of the disputes that arose under the agreement and the date of the suit; and (ii) the period between the date of the institution of the suit and the first application for the grant of ad interim relief. The material on the record would indicate that right from April 2000, the administrator was aware of the transactions between Ferani and entities which the administrator alleged were related or associated companies The record would show that as far back as on 16 May 2000 the administrator had

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questioned the transaction between Ferani and the Fifth Defendant on the ground that it was not a genuine sale. Ferani had on 9 June 2000 stated that the sale consideration accorded with the prevailing market prices at the time and offered to sell to the administrator an equivalent number of 56 flats on the same terms and conditions. Between 10 and 23 April 2001, the administrator had requested Ferani to send copies of agreements entered into pursuant to the transactions with Defendants 8 to 13, which agreements (negotiation letters) Ferani then submitted. On 23 April 2002 the administrator objected to a transaction entered into with the Sixth Defendant on the ground that being a group company the transaction was not with a genuine third party. On 2 May 2002 Ferani informed the administrator that for all practical purposes, the sale in favour of the Sixth Defendant had to be treated as a sale to a third party and was a genuine sale. On 2 June 2005, the administrator objected to the transaction that had taken place with Defendant No.31. On 2 April 2005, an MoU was entered into between Ferani and the Fifth and Sixth Defendants for the purchase of certain non-residential units of which copies were forwarded on 5 April 2005. On 5 April 2005 Ferani addressed communications to the administrator intimating the receipt of sums under letters of negotiation. Admittedly, several meetings took place between the parties on and after May 2005 when the administrator objected to the transactions. On 2 November 2005 the administrator in a communication suggested that after a notice of seven days, he shall be free to revoke the power of attorney provided to Ferani on account of its abuse. A meeting took place on 16 November 2005 between the representatives of the parties where it was agreed that a chart furnishing identities of the purchasers of the units / buildings and a break up of the

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transactions by category would be furnished. According to the administrator, the chart was furnished on 17 November 2005.

32. We have adverted to some of these events because they would suggest prima facie, though in fairly unmistakable terms, that parties were in dispute over the transactions which Ferani entered into right since April 2000. The record before the Court would, prima facie, indicate that from time to time the administrator raised objections to those transactions and was confronted with the defence by Ferani that the transactions accorded with the prevailing market price and were genuine transactions. In this background, the fact that the administrator chose to file the suit only in May 2008 assumes significance. Equities have intervened in the meantime. It has been stated before the Court on behalf of Ferani that in the interregnum steps have been taken for the removal of encroachment and for carrying out the work of development. Third party rights have intervened. Even after the suit was instituted on 13 May 2008, an application for ad interim relief was moved before the Learned Single Judge only on 3 March 2010. The only explanation which the administrator had for the delay in moving an application for ad interim relief is that the Sub Registrar and the Municipal Corporation had been moved not to register documents or, as the case may be, to grant building permission and it was only in October / December 2009 that the Municipal Corporation informed him that absent any injunction, it would proceed with permissions. Admittedly, in the meantime, the work under the project was continuing. These are circumstances which must weigh with the Court in declining to grant a stay on construction at the ad interim stage. The order which the Learned Single Judge passed precludes the sale of any unit

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whatsoever without the consent of the parties. Parties are in dispute and an order of the Court restricting the sale of constructed premises only with the consent of the parties would virtually bring the entirety of the project to a stand still. The entitlement of the administrator under the agreement dated 2 January 1995 is to the receipt of a share in the gross total consideration equivalent to 12%. The grant of injunctive relief restraining Ferani from selling its units would therefore neither be in accordance with the equities of the situation nor the mutual rights and obligations of the parties.

33. During the course of the hearing the Court has been informed by learned Senior Counsel appearing on behalf of Ferani that the following payments have been made or, as the case may be, deposited in pursuance of the agreement dated 2 January 1995 :

(i) Between 5 April 1996 and 9 January 2008 : Rs.144 Crores deposited in a designated account;

(ii) Between 9 January 2008 and May 2008 : Rs.14.54 Crores paid directly;

(iii) Between 14 May 2008 and 2 July 2009 : Rs.7.92 Crores deposited in the designated account;

(iv) Between 6 July 2009 till date : Rs.57 Crores deposited in an account maintained in the Indian Bank.

34. Accordingly an amount of Rs.223 Crores has been deposited or, as the case may be, paid directly. We are of the view that the ends of justice would be met if, pending the hearing and final disposal of the preliminary issue under

Section 9A, Ferani is directed to maintain accounts of all transactions falling within the purview of the agreement dated 2 January 1995 and in addition, is directed to continue to deposit an amount representing 12% of the share of the administrator out of the gross total consideration without prejudice to the rights and contentions of the parties.

35. Accordingly, the Appeals shall stand disposed of in terms of the following directions :

(i) Appeal 817 of 2010 filed by Ferani Hotels Private Limited shall stand allowed and the impugned order of the Learned Single Judge dated 19 July 2010 shall stand set aside;

(ii) The following issue is raised under Section 9A of the Code of Civil Procedure, 1908 and shall be tried as a preliminary issue :

"Whether the claim of the Plaintiff in the suit is barred by limitation."

(iii) The Plaintiff shall file an affidavit in lieu of the examination-in-chief within a period of four weeks from today. Shri Justice D.G. Karnik, Former Judge of this Court is appointed as Commissioner for recording evidence. The fees payable to the Commissioner shall initially be shared in equal proportion by both the parties;

(iv) Pending the hearing and final disposal of the preliminary issue, Ferani Hotels Private Limited is directed to maintain accounts and to continue depositing an amount equivalent to 12% of the gross sale consideration in a designated bank account. The amount upon deposit shall be invested in a fixed deposit to abide by further orders of the Learned Trial Judge;

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(v) Parties shall endeavour an expeditious completion of the recording of evidence before the Commissioner, preferably within a period of three months from today;

(vi) The Learned Single Judge is requested to endeavour an expeditious disposal of the preliminary issue preferably within a period of three months after the receipt of the report of the Commissioner appointed for recording evidence;

(vii) Liberty is reserved to the Plaintiff to apply before the Learned Single Judge for appropriate interim reliefs after the final decision on the preliminary issue;

(viii) Appeal 806 of 2010 filed by Mr. Nusli Wadia shall stand disposed of in the aforesaid terms;

(ix) We clarify that all the observations contained in this judgment are confined to the issues which have arisen before this Court at the present stage and the view expressed by the Court on the merits of the rival contentions shall not come in the way of the disposal of the Notice of Motion or the suit in terms of the directions issued.

(Dr. D.Y. Chandrachud, J.)

(R.D.Dhanuka, J.)

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SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

NOTARY
SUDHIR SHRAWAN SONAWANE
PUNE
REGD. NO. [illegible]
EXPIRY ON 24/10/2023
GOVERNMENT OF INDIA

C.A. 3396/ 457 Annexure R2 R4 53

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7732 of 2011

Foreshore Co-operative Housing Society Limited

..Appellant(s)

versus

Praveen D.Desai (Dead) thr. Lrs. and others

..Respondent(s)

with

Civil Appeal No. 5514 of 2012

Razia Amirali Shroff and others .....Appellant(s)

versus

M/s Nishuvi Corporation and others .....Respondent(s)

Civil Appeal No. 5515 of 2012

Razia Amirali Shroff and others .....Appellant(s)

versus

M/s Nishuvi Corporation and others .....Respondent(s)

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10404 EXPIRY DT. 24/10/2028 GOVERNMENT OF INDIA

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Civil Appeal No(s). 3396 of 2015
(Arising out of SLP(C) No.24880 of 2012)

Nusli Neville Wadia .....Appellant(s)

versus

Ferani Hotels (Pvt.) Ltd. and others
..Respondent(s)

Civil Appeal No(s).3397 of 2015
(Arising out of SLP (C) No.2989 of 2012)

Punam Co-operative Housing Society
.....Appellant(s)

versus

Pratap Issardas Bhatia and others
..Respondent(s)

Civil Appeal No(s).3393-95 of 2015
(Arising out of SLP (C) Nos.16373-16375 of 2013)

Rama Vijay Kumar Oberoi thr. GPH ...Appellant(s)

versus

Sunita Sudam Ranaware etc.
..Respondent(s)

JUDGMENT

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M. Y. EQBAL, J.

Leave granted.

2. In these appeals question has been raised about the ambit and scope of Section 9A CPC as inserted by the Code of Civil Procedure (Maharashtra Amendment) Act 1977 vis-à-vis the provision of Order XIV Rule 2 of the Code of Civil Procedure. Before adverting to the legal question, it would be proper to mention the nature of the orders passed by the Bombay High Court in these appeals.

3. In Civil Appeal No. 7732 of 2011 (Foreshore Co-operative Housing Society Limited vs. Praveen D. Desai (Dead) thr. Lrs. and others) the Division Bench of the Bombay High Court upheld the order of the learned Single Judge dismissing the appellant's suit on the ground that the suit was barred by limitation. In Civil Appeal No.5514 of

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2012, the appellants are aggrieved by the impugned Order dated 15.3.2012, whereby the Division Bench refused to interfere with order dated 24.1.2011 passed by the learned Single Judge in Notice of Motion No.3616 of 2010 in Suit No.2901 of 2010. The Notice of Motion was taken out by the plaintiffs seeking certain interim reliefs pending hearing of the suit. The learned Single Judge by the said order directed the defendants to file reply to the Notice of Motion and also directed that the Notice of Motion itself be placed for final hearing. Grievance of the plaintiffs before the Division Bench was that the learned Single Judge has declined to pass any ad-interim order in favour of the plaintiffs-appellants without giving any reason for doing so. The Division Bench noticed that the defendant-respondents had raised objection to the maintainability of the suit itself as also on the question whether the suit is filed within the period of limitation. In Civil Appeal No.5515 of 2012, the appellants are aggrieved by the order passed by the learned Single Judge whereby the prayer for grant of ad-interim relief

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was declined pending hearing on the preliminary issue raised by the defendants under Section 9A, CPC, till the jurisdiction of the court to entertain the suit is decided. The Division Bench in the matter of Nusli Neville Wadia (Civil Appeal arising out of SLP(C) No.24880/2012) set aside the judgment of the learned Single Judge and directed inter alia that the issue "*Whether the claim of the Plaintiff in the suit is barred by limitation*" be raised under Section 9A and tried as a preliminary issue. Whereas while dealing with the appeal against the order of learned Single Judge framing a preliminary issue under Section 9A with regard to limitation and decided to try it as preliminary issue, the Division Bench in the matter of Punam Co-operative Housing Society (Civil Appeal arising out of SLP(C) No.2989/2012) upheld decision of the Single Judge. In the matter of Sou. Rama Vijay Kumar Oberoi (Civil Appeal arising out of SLP(C)Nos.16373-16375/2013), the defendant raised an objection that the suit was barred by limitation, the trial court held that the issue of limitation being a mixed question of fact and law could not

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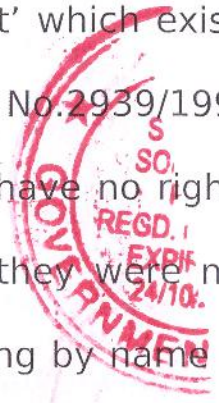
be framed as a preliminary issue under Section 9A, CPC. In appeal, learned Single Judge of the High Court in the impugned order directed the trial court to frame a preliminary issue under Section 9A as to whether the suit was barred by limitation.

4. Since the question of law in all these appeals is similar, we would like to narrate the factual matrix of the case pertaining to Civil Appeal No.7732 of 2011 (Foreshore Co-operative Housing Society Ltd.) which relates to the rights enjoyed by the parties therein over the suit property. The Appellant is a co-operative housing society consisting of owners of various flats in the building 'Advent' which exists on the suit property. The Appellant filed Suit No.2939/1999 for declaring that Respondent Nos.1-6 and 8 have no rights whatsoever over the suit property and that they were not entitled to carry out construction of the building by name of 'Divya Prabha' within the suit property and for permanently



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restraining them from doing so. The Appellant also prayed for declaring the revalidation of the I.O.D. (Intimation of Disapproval) and commencement certificate by Respondent No. 7 - Municipal Corporation in 1998, 2004 and 2005 in favour of Respondent Nos. 1-6 and 8 to carry out construction of the building by name of 'Divya Prabha' in the suit property to be illegal.

5. The suit property was originally leased to the Golwals. In 1958, the Golwals entered into an agreement dated 17.03.1958 granting development rights over a portion of the suit property to Respondent No.1 and also executed a Power of Attorney in his favour. Respondent No. 1 in turn transferred these rights in favour of his company-Respondent No. 2 vide agreement dated 23.10.1959. Respondent Nos. 1 and 2 constructed the building 'Advent' whose flat owners are the members of the Appellant Society. The Municipal Corporation granted I. O. D. and

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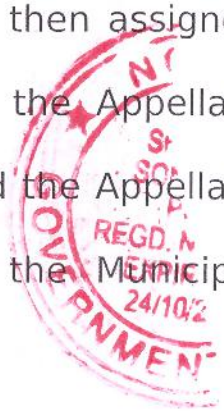
commencement certificate to Respondent No.1 in 1966 for constructing a building by the name of 'Divya Prabha' in the suit property. In 1968, the Municipal Corporation issued notices for stopping the construction of 'Divya Prabha' on account of irregularities therein. Respondent No. 1 filed a suit challenging these notices, however after the plaint was returned for presentation before the proper court, the same was not pursued.

6. In 1968-69, disputes arose between the Golwals and Respondent Nos. 1 and 2 in relation to the land development agreement and the Power of Attorney executed in favour of Respondent No. 1 was revoked. The Golwals then assigned their entire leasehold interest in favour of the Appellant society vide agreement dated 25.03.1969 and the Appellant was confirmed as the lawful assignee by the Municipal Corporation.



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7. The Appellant pleaded that in 1987, Respondent No.3 entered into the suit property and began carrying out construction of 'Divya Prabha' on the basis of an agreement purported to have been executed by Respondent Nos.1 and 2 in his favour in 1980 and on the basis of the agreement and power of attorney purported to have been executed in his favour by Golwala in 1984 and 1986 respectively. The Corporation is said to have issued a notice in 1987 to Respondent No. 3 to stop the construction and a suit challenging the same was filed by Respondent No. 3. The Appellant further pleaded that Respondent Nos.1-6 had executed a deed of assignment dated 14.10.1994 in favour of Respondent No. 8 selling the suit property and the building 'Divya Prabha' to the latter.

8. The Appellant filed Suit No. 6734/1994 in October, 1994 before the City Civil Court for declaring that Respondent Nos. 1-6 and 8 have no rights over the suit property, that they

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were not entitled to carry out construction within the suit property and for declaring that the revalidations of I. O. D. and the commencement certificate were illegal. On 28.06.1996, the validity of the I. O. D. and the commencement certificate of 1966 were extended till 19.06.1997 and the suit was amended to challenge the same. When the validity of the I.O.D. and commencement certificate expired, learned Single Judge of the High Court permitted Respondent Nos. 1-6 and 8 to apply again for revalidation and directed them to communicate any such order to the Appellant. Respondent No. 8 was alleged to have forcibly entered into the suit property on various occasions in 1998 and begun construction of 'Divya Prabha' without informing the Appellant of any grant of permission whereupon the Appellant filed a suit for injunction.

9. Revalidation certificates dated 18.09.1998 and 05.10.1998 were issued in relation to the I. O. D. and the

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commencement certificate, and the Appellant amended the plaint to challenge the same. However, by an order dated 16.04.1999, the plaint in Suit No. 6734/1994 was returned for presentation before the proper court as it was improperly valued and exceeded the jurisdiction of the City Civil Court. The Appellants filed an appeal against the said order, but afterwards withdrew it. In 1999, Appellant then filed a suit being Suit No. 2939/1999 before the Single Judge of the High Court, which was amended to challenge the revalidation certificates granted on 08.03.2004, 09.03.2004, 08.07.2004 and on 06.08.2005 during the pendency of the suit. This suit was also permitted to be amended in 2005 for incorporating pleadings to the effect that Suit No. 6734/1994 was filed and prosecuted before the City Civil Court in good faith and with due diligence.

10. The Appellant filed Notice of Motion for grant of injunction and Respondent No. 8 raised preliminary

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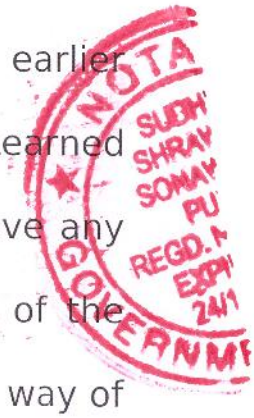
objections regarding the maintainability of the suit. Learned Single Judge noted that Section 9A of the Code of Civil Procedure provides for hearing an objection regarding the jurisdiction of the court to entertain a suit as a preliminary issue when such objection is raised in an application for grant of interim relief. In view of the same, learned Single Judge framed a preliminary issue as to whether Suit No.2939/1994 was barred by limitation or not. Learned Single Judge held that though the matter in issue in Suit No.6734/1994 and Suit No.2939/1999 was the same, the Appellant was not entitled to the benefit under Section 14 of the Limitation Act as it had failed to prove that the earlier suit was pursued with due diligence and good faith. Learned Single Judge noted that the plaint initially did not have any pleadings for availing the benefit under Section 14 of the Limitation Act and that the same was incorporated by way of an amendment in 2005 after the reply to the notice of motion was filed and preliminary issue regarding jurisdiction was framed. The Appellant was required to prove not only



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the diligent prosecution of Suit No. 6734/1994 but also its diligent institution and the Single Judge held that the Appellant had failed to do so having been unable to show that the said suit was incorrectly valued despite due care and caution. The Appellant was also held to have not cited any particulars or evidence for having pursued the earlier suit in good faith. Learned Single Judge dismissed the suit as barred by limitation vide judgment dated 20.01.2006.

11. Aggrieved by the judgment of the Single Judge, Appellant filed an appeal before the Division Bench of the High Court. The Appellant pleaded that the bar of limitation was not a bar on the jurisdiction of the court and that the question of limitation was a question of law and fact which had to be decided along with the other issues in the suit. The Appellant also contended that it was entitled to the benefit under Section 14 of the Limitation Act, 1963 and that even assuming that it was not so entitled, the suit would still be

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within the period of limitation as the cause of action arose when the I. O. D. and the commencement certificate were revalidated on 18.09.1998 and 05.10.1998 and when the Respondents trespassed into the suit property on various occasions in 1998.

12. After hearing learned counsel on either side, the Division Bench held that the moment the issue of jurisdiction was raised under Section 9A of Code of Civil Procedure, such issue had to be decided first as the same was mandated under Section 9A and as valuable time could be saved in case it is found that the court does not have jurisdiction. The term "jurisdiction" under Section 9A was held to have been used in a wider sense and subject to any statutory bar on the maintainability of a suit. The Division Bench held that the court was bound to dismiss a suit barred by limitation as it had no jurisdiction to entertain the same. The plea of limitation was held to be a question of law which related to

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the jurisdiction of the court and the court was held to be precluded from adjudicating the matter on merits when the suit was barred by limitation. The Division Bench went on to hold that the suit herein, which was filed on 18.05.1999, was barred by limitation as the cause of action arose in April, 1994. The view of the Single Judge that the plaint initially did not have any pleadings for availing the benefit under Section 14 of the Limitation Act and that the same was incorporated by way of an amendment in 2005 was upheld. The Division Bench held that the Appellant was not entitled to the benefit under Section 14 of the Limitation Act as there was no proof of the earlier suit having been prosecuted with due diligence and good faith and dismissed the appeal vide the impugned judgment.

13. Hence, the present appeals by special leave by the appellants.

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14. We have heard Mr. F.S. Nariman, Mr. P. Chidambaram, Mr. Shekhar Naphade, Mr. Jaideep Gupta, learned senior advocates appearing on behalf of the appellants. We have also heard Mr. Kapil Sibal, Mr. Salman Khurshid, Dr. A.M. Singhvi, Mr. Ashwini Kumar, Mr. A. Sharan, Mr. Shyam Divan and other learned senior counsel appearing for the respondents.

15. At the very outset, Mr. Nariman drew our attention to the aim and object of bringing Section 9A by Maharashtra Amendment in the Code of Civil Procedure. According to the learned senior counsel, Maharashtra Legislature used the word 'jurisdiction' in all matters concerning jurisdiction, i.e. the pecuniary or territorial, notwithstanding that in Order XIV Rule 2 preliminary issue is to be raised only when it is of law. It cannot be raised when the issue of jurisdiction is a mixed issue of law and fact. According to Mr. Nariman, 'jurisidction' used in Section 9A is confined to its textual interpretation

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i.e., any plea as to the jurisdiction of the court with reference to the subject matter, territorial or pecuniary jurisdiction, which ousts the jurisdiction of the court. Mr. Nariman submitted that initially Section 9A was enacted by Maharashtra Amendment Act of 1969 because of judgments rendered by the Bombay High Court. It was only for the purpose of deciding objections as to the jurisdiction either territorial or pecuniary, Section 9A was inserted. Learned senior counsel submitted that since the date of enactment of Section 9A in 1970 the questions of territorial and pecuniary jurisdiction have been decided. Mr. Nariman then referring the decision of this Court in the case of ***Mathai vs. Varkey Varkey***, (1964) 1 SCR 495, submitted that a court having jurisdiction over the subject matter of the suit and over the parties thereto, though bound to decide right may decide wrong, and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. In other words, courts having jurisdiction to decide right or to decide wrong and even though decide

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wrong, the decree rendered by them cannot be treated as nullity. The gist of the argument of Mr. Nariman and other counsel is that a preliminary objection as to jurisdiction under Section 9A would not include an objection that it is barred by limitation. Learned counsel put heavy reliance on the decision of this Court in ***Ramesh B. Desai and Ors. vs. Bipin Vadilal Mehta and Ors.***, (2006) 5 SCC 638.

16. Per contra, Mr. Kapil Sibal, learned senior counsel appearing for the respondents submitted that the application of Section 9A comes at the very initial stage of the suit whereas the provision of Order XIV Rule 2 can be invoked at the time of framing of issues. Learned counsel submitted that no prejudice would be caused inasmuch as the Court may in its discretion refuse to hear the preliminary issue. According to the learned counsel, question of limitation concerns the jurisdiction of the Court as the limitation goes to the root of jurisdiction. Mr. Sibal, relied upon a three

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Judges Bench decision of this Court in **Official Trustee W.B. vs. Sachindra** (1969) SC 823, **National Thermal Power Corporation Ltd. vs. Siemens Atkeingesellschaft**, (2007) 4 SCC 451.

17. Dr. A.M. Singhvi submitted that insertion of Section 9A by Maharashtra Amendment is a legislative policy decision of the State to entertain objection to jurisdiction at the initial stage and to decide it as preliminary issue. According to the learned counsel, the question of limitation is the question of jurisdiction and it has to be decided as a preliminary issue. Learned counsel put reliance on ***ITW Signode India Ltd vs. Collector of Central Excise,*** (2004) 3 SCC 48; ***Manick Chandra Nandy vs. Debdas Nandy and Others,*** (1986) 1 SCC 512; ***Kamlesh Babu and Others vs. Lajpat Rai Sharma and Others,*** (2008) 12 SCC 577.

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18. We have also heard Mr. Salman Khurshid and Mr. Ashwani Kumar, learned senior advocates appearing for the respondents. The submissions of learned counsel are as under:-

> The juridical and jurisprudential meaning of the term "jurisdiction" as used inter-alia in Section 9A of the CPC (as amended in 1977), and by virtue of Order XIV Rule 2 (b) initially interpreted in a catena of judgments, cannot be limited in its sweep to exclude a case where the suit/any part of the alleged cause of action is barred by limitation. Section 9A provides a self contained scheme and given its non-obstante clause, must prevail.
>
> A plea pertaining to the bar of limitation has been consistently held by the Supreme Court and followed by High Courts, as one giving rise to the issue of jurisdiction. An issue of limitation refers to a statutory bar to the exercise of jurisdiction.

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19. Learned counsel further submitted that upon a harmonious construction of the two provisions and considering the consistent judicial dicta whereby an issue of limitation is treated as a jurisdictional issue, Clauses (a) and (b) of Rule 2(2), Order XIV of the CPC ought to be read as jurisdictional issues although arising under different pleas.

20. Learned counsel further submitted that even otherwise the non-obstante clause inserted by the Maharashtra Amendment of 1977 in Section 9A of CPC and the express mandate of Section which is a self-contained scheme and a later expression of legislative intent, the policy and intention of the law is to decide an issue relating to jurisdiction of the court, on whatever grounds raised, as a preliminary issue, notwithstanding of any other provision in the CPC. Such an issue is to be decided at the hearing under Section 9A when

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the court is not precluded from considering the facts either on prima facie basis or otherwise.

21. Learned counsel also referred a catena of decisions for the proposition that question of limitation concerns the jurisdiction of court and such issue goes to the root of jurisdiction and may oust the jurisdiction of the court.

22. Similar argument have been advanced by Mr. Shyam Divan and other learned senior counsel appearing for the respondents.

23. Section 9 of the Code of Civil Procedure confers power and jurisdiction to Courts to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. For better clarification, Explanations (I)

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and (II) have been added. Section 9 with explanations reads as under:-

> **"9. Courts to try all civil suits unless barred:-** The Courts shall (subject to the provisions herein contained) have jurisdiction to try all Suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
>
> Explanation I.—As suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
>
> Explanation II—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."

24. A bare reading of the aforesaid provision would show that all suits of civil nature can be entertained by civil Courts. However, Explanation (I) clarifies as to what a suit of a civil nature is.

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25. Immediately, after Section 9, Section 9A was inserted by Code of Civil Procedure (Maharashtra Amendment) Act, 1970. Section 9A as inserted in the Code of Civil Procedure (Maharashtra Amendment) Act of 1970 reads as follows:-

> "9A. Where by an application for interim relief is sought or is sought to be set aside in any suit and objection to jurisdiction is taken, such issue to be decided by the Court as preliminary issue at hearing of the application.
>
> (1) If, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of injunction, appointment of a receiver or otherwise, made in any suit, an objection for the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.
>
> (2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."

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26. In the year 1976, the Code of Civil Procedure 1908 was extensively amended by the Code of Civil Procedure

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(Amendment) Act, 1976. Section 97 of the Amendment Act of 1976 *inter alia* provided that any amendment made in the Code by the State Legislature before commencement of the Amendment Act of 1976 shall, except insofar as they are consistent with the Code as amended by the Amendment Act, 1976 shall stand repealed. As a result, those amendments made in the CPC by the State Legislature which were inconsistent with the amendments brought in 1976 stood repealed.

27. After the aforesaid Section 9A of Maharashtra Amendment stood repealed, the State Legislature felt that certain amendments made by the Maharashtra State Amendment Act were useful and required to be continued. Hence, the State Legislature of Maharashtra re-enacted Section 9A with the assent of the President of India as required under Article 254(2) of the Constitution of India, so that the same may continue to prevail. Hence, by Section 3

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of Maharashtra (Amendment) Act of 1976, it again inserted Section 9A in the Code of Civil Procedure. Section 9A which has been inserted in the 1977 by the State Legislature reads as under:-

> "9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.- (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case he adjourned to the hearing of the suit.
>
> (2) Notwithstanding anything contained in Sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to be jurisdiction."

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28. As noticed above, Section 9A was for the first time inserted by Amendment Act of 1970. The statement of objects and reasons for such amendment is quoted hereunder:-

> "The effect of the judgment of the High Court in Institute Indo-Portuguese vs. Borges (1958) 60 Bom. L.R. 660 is that the Bombay City Civil Court for the purposes of granting interim relief cannot or need not go into the question of jurisdiction. Sometimes declaratory suits are filed in the City Court without a valid notice under section 80 of the Code of Civil Procedure, 1908. Relying upon another judgment of the High Court recorded on the 7th September, 1961 in Appeal No.191 of 1960, it has been the practice of the City Court to adjourn a notice of motion for injunction in a suit filed without such valid notice, which gives time to the plaintiff to give the notice. After expiry of the period of notice, the plaintiff is allowed to withdraw the suit with liberty to file a fresh one. In the intervening period, the Court grants an ad interim injunction and continues the same. The practice of granting injunctions, without going into the question of jurisdiction even though raised, has led to grave abuse. It is therefore, proposed to provide that if a question of jurisdiction is raised at the hearing of any application for granting or setting aside an order granting an interim relief, the Court shall determine that question first."

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29. For the purpose of re-inserting Section 9A in 1977, after Section 9A stood repealed by 1976 CPC Amendment Act, the statement of objects and reasons of the relevant portion of said Bill is extracted hereinbelow:-

> "2. The Code has now been extensively amended by the Code of Civil Procedure (Amendment) Act, 1976 (CIV of 1976) enacted by Parliament. Section 97 of the Amendment Act provides inter alia that any amendment made in the Code by a State Legislature before the commencement of the Act shall except in so far as they are consistent with the Code as amended by the Amendment Act, stand repealed. Unless there is an authoritative judicial pronouncement, it is difficult to say which of the State Amendments are inconsistent with the Code as amended by the Central Amendment Act of 1976 and which consequently stand repealed. All the amendments made in the Code by the State Acts, except the amendment made in the proviso to section 60(1) by the State Act of 1948, have been found to be useful and are required to be continued. The amendment made by the State Act of 1948 is no more required because it is now covered by the amendment made in clause (g) of the said proviso by the Central Amendment Act of 1976. But to leave no room for any doubt whether the remaining State amendments continue to be in force or stand repealed, it is proposed that the old amendments should be repealed formally and in their places similar amendments may be re-enacted, with the assent of the president under article 254(2) of the Constitution, so that they may continue to

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prevail and be available in this State as before. The Bill is intended to achieve these objects.

3. The following notes on clauses explain the purposes of these clauses:-

Preamble – it gives the background and main reasons for the proposed legislation.

Clauses 2 and 3—Clause 2 formally repeals the State Act of 1970 and the new section 9A inserted by it, to make way for re-enacting by clause 3 of the same section in a slightly revised form."

30. The question that arises for consideration before this Court is as to whether the phrase "an objection to the jurisdiction of the Court to entertain such a suit" as used in Section 9A of the Maharashtra Manual would include an objection with regard to limitation. In other words, whether an issue relating to a bar to the suit created by law of limitation can be tried as preliminary issue under Section 9A of the Code.

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31. For better appreciation of the object and interpretation of Section 9A, it would be proper to have a comparison with the provision contained in Order XIV Rule 2 of the Code of Civil Procedure. Rule 2 of Order XIV reads as under:-

> "**2. Court to pronounce judgment on all issues.-** (1) Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.
>
> (2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—
>
> (a) the jurisdiction of the court, or
>
> (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

32. Order XIV Rule 2 of the Code of Civil Procedure, confers power upon the Court to pronounce judgment on all the issues. But there is an exception to that general Rule i.e., where issues both of law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof

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may be disposed of on the issue of law, it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law.

33. Order XIV Rule 2 of the Code of Civil Procedure as it existed earlier reads as under:-

> "Issues of law and of fact:
>
> Whether issues both of law and of fact arise in the same suit, and the Court is of 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".

34. A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases. In the un-amended Code, the categorization was only between issues of law and

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of fact and it was mandatory for the Court to try the issues of law in the first instance and to postpone the settlement of issues of fact until after the issues of law had been determined. On the other hand, in the amended provision there is a mandate to the Court that notwithstanding that a case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring discretion upon the Court that if the Court is of opinion that the case or any part thereof may be disposed of "on an issue of law only", it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force.

35. The moot question, therefore, that falls for consideration is as to whether courts shall be guided by the provisions of Order XIV Rule 2 of the Code of Civil Procedure or Section 9A

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of the Code as amended by Maharashtra Amendment Act, in the matter of deciding the objection with regard to jurisdiction of the court which concerns the bar of limitation as a preliminary issue.

36. Indisputably, the subject of Civil Procedure, including all matters included in the Code of Civil Procedure, is placed under Entry 13 in the Concurrent List of the VII Schedule appended to the Constitution of India. After Section 9A of Maharashtra Amendment Act stood repealed by Section 97 of the CPC Amendment Act of 1976 being inconsistent with the Code, the State Legislature of Maharashtra felt that certain amendments made by the earlier State Amendment Acts were useful and required to be continued. To leave no room for confusion as to whether the State Amendments continued to be in force or repealed, Section 9A was again re-enacted with the assent of the President of India under Article 254 (2) of the Constitution of India.

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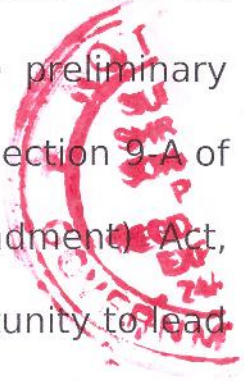
37. As noticed above, Section 9A of the Maharashtra Amendment Act is a complete departure from the procedure provided under Order XIV Rule 2 of the Code of Civil Procedure. Notwithstanding the inconsistency contained in the Act of the Parliament viz., the Code of Civil Procedure and the provisions contained in Section 9A of the State Act, having regard to the fact that the assent of the President was received, the provisions of the said Section has to be complied with and can be held to be a valid legislation.

38. In the case of ***Meher Singh vs. Deepak Sawhny***, reported in 1998 (3) MhLJ 940 = 1999 (1) Bom CR 107, the question that referred to the Division Bench for its consideration was whether while deciding the preliminary issue of jurisdiction as contemplated under Section 9-A of the Code Civil Procedure (Maharashtra Amendment) Act, 1977 the parties are required to be given opportunity to lead evidence?. The Division Bench noticed that Section 9-A was added to the Civil Procedure Code by Code of Civil Procedure



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(Maharashtra Amendment) Act, 1977. As per the amended provision if in a suit, an objection to the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Before the learned Single Judge, it was contended that when the said issue is raised for determination, the Court is required to permit the parties to lead evidence. The Division Bench considered the amended provision as contained in Section 9-A vis-a-vis Order XIV Rule 2 of the Code of Civil Procedure and observed:-

> "13. In the result we hold that if Section 9-A is not added, then at interim stage, the Court is not required to decide the issue of jurisdiction finally and the Court by referring to the averments made in the plaint, would ordinarily determine whether or not the Court has jurisdiction to try the suit. However, it is apparent that section 9-A is added with a specific object to see that objection with regard to jurisdiction of the Court is decided as a preliminary issue. According to the Legislature, the practice of granting injunctions without going into the question of jurisdiction even though raised, has led to grave abuse. Hence the said section is added to see that issue of

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jurisdiction is decided as a preliminary issue notwithstanding anything contained in the Civil Procedure Code, including Order XIV, Rule 2. Once the issue is to be decided by raising it as a preliminary issue, it is required to be determined after proper adjudication. Adjudication would require giving of opportunity to the parties to lead evidence, if required."

39. From the statement of objects and reasons it is evident that the practice followed in the City Civil Court in filing the suits against the Government without giving notice under Section 80 of the CPC and after the interim relief continued the plaintiff takes permission to withdraw the suit and to file a fresh suit. As a matter of fact, the legislature intended to stop this abuse of process by introducing Section 9A in the CPC by Maharashtra amendment Act. By reason of such amendment the Court is now required to decide the issue of jurisdiction at the time of granting the relief or considering the application for vacating the interim relief.

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40. From reading of the aims and object of the Bill whereby Section 9A was inserted, the term 'jurisdiction' is used in a wider sense and is not restricted to the conventional definition either pecuniary jurisdiction or territorial jurisdiction as submitted by Mr. Nariman, learned senior counsel appearing for the appellant.

41. The term 'jurisdiction' is a term of art; it is an expression used in a variety of senses and draws colour from its context. Therefore, to confine the term 'jurisdiction' to its conventional and narrow meaning would be contrary to the well settled interpretation of the term. The expression 'jurisdiction', as stated in Halsbury's Laws of England, Volume 10, paragraph 314, is as follows:

> "314. **Meaning of 'jurisdiction'**: By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means.

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> If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the claims and matters of which the particular court has cognisance, or as to the area over which the jurisdiction extends, or it may partake of both these characteristics."

42. In American Jurisprudence, Volume 32A, paragraph 581, it is said that

> "Jurisdiction is the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause."

Further, in paragraph 588, it is said that lack of jurisdiction cannot be waived, consented to, or overcome by agreement of the parties.

43. It is well settled that essentially the jurisdiction is an authority to decide a given case one way or the other. Further, even though no party has raised objection with regard to jurisdiction of the court, the court has power to determine its own jurisdiction. In other words, in a case

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where the Court has no jurisdiction; it cannot confer upon it by consent or waiver of the parties.

44. Section 3 of the Limitation Act, 1963 clearly provides that every suit instituted, appeal preferred and application made after the prescribed period of limitation, subject to the provisions contained in Sections 4 to 24, shall be dismissed although the limitation has not been set up as a defence.

45. A Constitution Bench of five Judges of this Court in the case of ***Pandurang Dhondi Chougule vs. Maruti Hari Jadhav***, 1966 SC 153, while dealing with the question of jurisdiction, observed that a plea of limitation or plea of *res judicata* is a plea of law which concerns the jurisdiction of the court which tries the proceeding. The Bench held:-

> "10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors

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> of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (*a*), (*b*) and (*e*) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115."
>
> (Emphasis given)

46. In the case of ***Manick Chandra Nandy vs. Debdas Nandy,*** (1986) 1 SCC 512, this Court, while considering the the nature and scope of High Court's revisional jurisdiction in a case where a plea was raised that the application under Order IX Rule 13 was barred by limitation, held that a plea of

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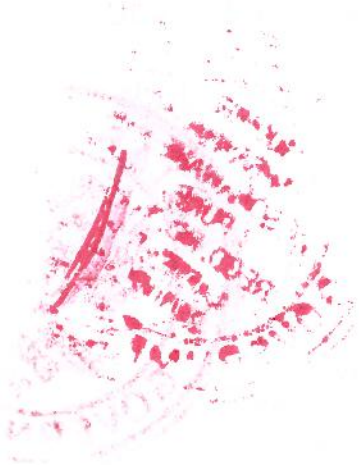
limitation concerns the jurisdiction of the court which tries a proceeding for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In the case of ***National Thermal Power Corpn. Ltd. vs. Siemens Atkeingesellschaft,*** 2007 (4) SCC 451, this Court considering the similar question under the Arbitration and Conciliation Act held as under:-

> "17. In the larger sense, any refusal to go into the merits of a claim may be in the realm of jurisdiction. Even the dismissal of the claim as barred by limitation may in a sense touch on the jurisdiction of the court or tribunal. When a claim is dismissed on the ground of it being barred by limitation, it will be, in a sense, a case of the court or tribunal refusing to exercise jurisdiction to go into the merits of the claim. In *Pandurang Dhoni Chougule* v. *Maruti Hari Jadhav* this Court observed that: (AIR p. 155, para 10)
>
> > "It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code."



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47. In the case of ***Official Trustee vs. Sachindra Nath Chatterjee,*** AIR 1969 SC 823, a three Judges Bench of this Court while deciding the question of jurisdiction of the Court under the Trust Act observed:-

> "15. From the above discussion it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties."

48. In the case of ***ITW Signode India Ltd. vs. CCE,*** (2004) 3 SCC 48, a similar question came before a three Judges Bench of this Court under the Central Excise Act, 1944, when this Court opined as under:-

> "69. The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact. Such a jurisdictional question is to be determined having regard to both fact and law involved therein. The Tribunal, in our opinion, committed a manifest error in not determining the said question, particularly, when in the absence of any finding of fact that

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> such short-levy of excise duty related to any positive act on the part of the appellant by way of fraud, collusion, wilful misstatement or suppression of facts, the extended period of limitation could not have been invoked and in that view of the matter no show-cause notice in terms of Rule 10 could have been issued."

49. In the case of ***Kamlesh Babu vs. Lajpat Rai Sharma***, (2008) 12 SCC 577, the matter came to this Court when the trial court dismissed the suit on issues other than the issue of limitation. The Bench held:-

> "23. The reasoning behind the said proposition is that certain questions relating to the jurisdiction of a court, including limitation, goes to the very root of the court's jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction will be a nullity. However, we are not required to elaborate on the said proposition, inasmuch as in the instant case such a plea had been raised and decided by the trial court but was not reversed by the first appellate court or the High Court while reversing the decision of the trial court on the issues framed in the suit. We, therefore, have no hesitation in setting aside the judgment and decree of the High Court and to remand the suit to the first appellate court to decide the limited question as to whether the suit was barred by limitation as found by the trial court. Needless to say, if the suit is found to be so barred, the appeal is to be dismissed. If the suit is not found to be time-

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> barred, the decision of the first appellate court on the other issues shall not be disturbed."

50. Mr. Shekhar Naphade, learned senior counsel appearing for the respondent relied upon a recent decision of a Division Bench of this Court in Civil Appeal No. 1085 of 2015 (***Kamalakar Eknath Salunkhe vs. Baburav Vishnu Javalkar & Ors***.) where this Court while considering Section 9A of the Maharashtra Amendments of CPC observed that the expression 'jurisdiction" in Section 9A is used in a narrow sense i.e. territorial and pecuniary jurisdiction and not question of limitation. The Court observed:-

> "17. The expression "jurisdiction" in Section 9A is used in a narrow sense, that is, the Court's authority to entertain the suit at the threshold. The limits of this authority are imposed by a statute, charter or commission. If no restriction is imposed, the jurisdiction is said to be unlimited. The question of jurisdiction, *sensu stricto*, has to be considered with reference to the value, place and nature of the subject matter. The classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction over the subject-matter is of a fundamental character. Undoubtedly, the jurisdiction of a Court may get restricted by a variety of circumstances expressly mentioned in a statute, charter or commission. This inherent jurisdiction of a Court depends upon the pecuniary and territorial limits laid down by

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law and also on the subject-matter of the suit. While the suit might be barred due to non-compliance of certain provisions of law, it does not follow that the non-compliance with the said provisions is a defect which takes away the inherent jurisdiction of the Court to try a suit or pass a decree. The law of limitation operates on the bar on a party to agitate a case before a Court in a suit, or other proceedings on which the Court has inherent jurisdiction to entertain but by operation of the law of limitation it would not warrant adjudication.

19. Thus, with the intention to put the aforesaid practice to rest, the State Legislature introduced Section 9A by the amendment Act of 1969 requiring the Court to decide the issue of jurisdiction at the time of granting or vacating the interim relief. In other words, the legislature inserted section 9A to ensure that a suit which is not maintainable for want of jurisdiction of the concerned Court, ought not be tried on merits without first determining the question of maintainability of the suit as to jurisdiction of the Court, approached by the plaintiff, as a preliminary issue.

20. The provision contemplates that when an issue of jurisdiction is raised, the said issue should be decided at first as expeditiously as possible, and not be adjourned to a later date.
The primary reason is that if the Court comes to finding that it does not have jurisdiction vested in it in law, then no further enquiry is needed and saves a lot of valuable judicial time.

21. A perusal of the Statement of Object and Reasons of the Amendment Act would clarify that Section 9A talks of maintainability only on the question of inherent jurisdiction and does not contemplate issues of limitation. Section 9A has been inserted in the Code to prevent the abuse of the Court process where a plaintiff drags a

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> defendant to the trial of the suit on merits when the jurisdiction of the Court itself is doubtful.
>
> 22. In the instant case, the preliminary issue framed by the Trial Court is with regard to the question of limitation. Such issue would not be an issue on the jurisdiction of the Court and, therefore, in our considered opinion, the Trial Court was not justified in framing the issue of limitation as a preliminary issue by invoking its power under Section 9A of the Code. The High Court has erred in not considering the statutory ambit of Section 9A while approving the preliminary issue framed by the Trial Court and thus, rejecting the writ petition filed by the appellant."

51. With great respect, we are of the view that the decision rendered by the Division Bench in the case of ***Kamalakar Eknath Salunkhe vs. Baburav Vishnu Javalkar & Ors***. is contrary to the law settled by the Constitution Bench and three Judges Bench of this Court, followed by other Division Bench in ***Pandurang Dhondi Chougule vs. Maruti Hari Jadhav***, AIR 1966 SC 153, (Five Judges Bench) in **Manick Chandra Nandy vs. Debdas Nandy**, (1986) 1 SCC 512, ***National Thermal Power Corpn. Ltd. vs. Siemens Atkeingesellschaft***, (2007) 4 SCC 451, ***Official Trustee vs. Sachindra Nath Chatterjee*** AIR 1969 SC 823, ***ITW***

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Signode India Ltd. vs. CCE, (2004) 3 SCC 48 and ***Kamlesh Babu vs. Lajpat Rai Sharma,*** (2008) 12 SCC 577. The Constitution Bench decision and other decisions given by larger Bench are binding on us. It appears that those decisions have not been brought to the notice of the Division Bench taking a contrary view.

52. Discussing the principle of binding precedents in the case of ***State of U.P. vs. Synthetics and Chemicals Ltd***. 1991(4) SCC 139, this Court in paragraph 40 and 41 held as under:-

> "40. 'Incuria' literally means 'carelessness'. In practice *per incuriam* appears to mean *per ignoratium*. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, '*in ignoratium* of a statute or other binding authority'. (*Young* v. *Bristol Aeroplane Co. Ltd.*). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu* v. *Rajdewan Dubey* this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from *Halsbury's Laws of England*

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incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (*Salmond on Jurisprudence* 12th Edn., p. 153). In *Lancaster Motor Company (London) Ltd.* v. *Bremith Ltd.* the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi* v. *Gurnam Kaur*. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not *ratio decidendi*. In *B. Shama Rao* v. *Union Territory of Pondicherry* it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as

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> a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

53. The doctrine of binding precedents has been settled by several pronouncements of this Court. The Constitution Bench of this Court in the case of ***Union of India vs. Raghubir Singh***, (1989) 2 SCC 754, observed as under:-

> "8. Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.
>
> 9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

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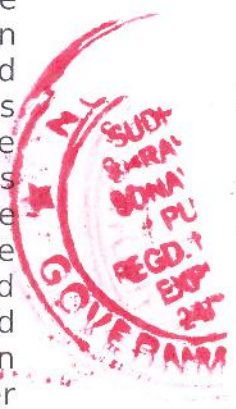
54. In the case of ***Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha,*** (2001) 4 SCC 448, a Constitution Bench of this Court reiterated the same principle and held that:-

> "2. We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a Bench of three learned Judges."

55. This Court in the case of ***Central Board of Dawoodi Bohra Community vs. State of Maharashtra***, (2005) 2 SCC 673, held as under:-

> "8. In *Raghubir Singh case,* Chief Justice Pathak pointed out that in order to promote consistency and certainty in the law laid down by the superior court the ideal condition would be that the entire court should sit in all cases to decide questions of law, as is done by the Supreme Court of the United States. Yet, His Lordship noticed, that having regard to the volume of work demanding the attention of the Supreme Court of India, it has been found necessary as a general rule of practice and convenience that the Court should sit in divisions consisting of judges whose number may be determined by the exigencies of judicial need, by the nature of the case



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> including any statutory mandate relating thereto and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. The Constitution Bench reaffirmed the doctrine of binding precedents as it has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs."

56. Mr. Nariman, learned senior counsel appearing for the appellant put heavy reliance on the decision in the case of ***Ramesh B. Desai vs. Bipin Vadilal Mehta,*** (2006) 5 SCC 638, for the proposition that a plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. In our considered opinion, in the aforesaid decision this Court was considering the provision of Order XIV Rule 2, CPC. While interpreting the provision of Order XIV Rule 2, this Court was of the view that the issue on limitation, being a mixed question of law and fact is to be decided along with other

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issues as contemplated under Order XIV, Rule 2, CPC. As discussed above, Section 9A of Maharashtra Amendment Act makes a complete departure from the procedure provided under Order 14, Rule 2, CPC. Section 9A mandates the Court to decide the jurisdiction of the Court before proceeding with the suit and granting interim relief by way of injunction.

57. At the cost of repetition, we observe that Section 9A provides a self-contained scheme with a non-obstante clause which mandates the court to follow the provision. It is a complete departure from the provisions contained in Order XIV Rule 2 CPC. In other words, the non-obstante clause inserted by Maharashtra Amendment Act of 1977 in Section 9A and the express mandate of the Section, the intention of the law is to decide the issue relating to jurisdiction of the court as a preliminary issue notwithstanding the provision contained in Order XIV Rule 2 CPC. However, it is made clear that in other cases where the suits are governed by the

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provisions of Order XIV Rule 2 CPC, it is the discretion of the court to decide the issue based on law as preliminary issue.

58. We, therefore, after giving our anxious consideration to the provisions of Code of Civil Procedure together with the amendments introduced by the State Legislature, hold that the provision of Section 9A as introduced by (Maharahtra Amendment) Act is mandatory in nature. It is a complete departure from the provisions of Order XIV, Rule 2, C.P.C. Hence, the reasons given by the High Court in the impugned orders are fully justified. We affirm the impugned orders passed by the High Court.

59. For the reasons aforesaid, we do not find any merit in these appeals, which are accordingly dismissed with no order as to costs.

.....J.
(M.Y. Eqbal)

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.....J.
(Kurian Joseph)

New Delhi,
April 08, 2015.

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SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

NOTARY
SUDHIR SHRAWAN SONAWANE
PUNE
REGD. NO. 10404
EXPIRY DT. 24/10/2018
GOVERNMENT OF INDIA

REVISED

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

REVIEW PETITION(C) No.2856/2015

IN

CIVIL APPEAL No.3396/2015

NUSLI NEVILLE WADIA — Petitioner (s)

VERSUS

FERANI HOTELS PRIVATE LIMITED & ORS — Respondent(s)

O R D E R

This Review Petition is disposed of in terms of the judgment dated 4th October, 2019 passed by this Court. Pending application(s), if any, shall stand disposed of.

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10404 EXPIRY DT. 24/10/2028 GOVERNMENT OF INDIA

.....J
(L. NAGESWARA RAO)

.....J
(B.R. GAVAI)

NEW DELHI;
06th May, 2022.

Digitally signed by GEETA AHUJA
Date: 2022.05.18 19:21:39 IST
Reason:

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SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

REVIEW PETITION(C) No.2856/2015

IN

CIVIL APPEAL No.3396/2015

NUSLI NEVILLE WADIA Petitioner (s)

VERSUS

FERANI HOTELS PRIVATE LIMITED & ORS Respondent(s)

O R D E R

We have perused the Review Petition and the connected papers. We do not find any error in the impugned order, much less an error apparent on the fact of the record, so as to call for its review.

The review petition is , accordingly, dismissed. Pending application(s) shall stand disposed of.

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10404 EXPIRY DT. 24/10/2023 GOVERNMENT OF INDIA

.....J
(L. NAGESWARA RAO)

.....J
(B.R. GAVAI)

NEW DELHI;
06th May, 2022.

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SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

REVISED SIGNED ORDER

ITEM NO.27 COURT NO.5 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).31982-31983/2013

(Arising out of impugned final judgment and order dated 20-09-2013 in SN No.414/2008 19-09-2013 in AN No.414/2008 passed by the High Court Of Judicature At Bombay)

NUSLI NEVILLE WADIA Petitioner(s)

VERSUS

IVORY PROPERTIES AND HOTELS PVT. LTD. & ORS. Respondent(s)

WITH
R.P.(C) No.2856/2015 In C.A. No.3396/2015 (III)

Date : 06-05-2022 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Darius J.Khambata,Sr.Adv.
Mr. Siddharth Bhatnagar,Sr.Adv.
Ms. Nandini Gore,Adv.
Mr. Rohan Kelkar,Adv.
Ms. Natasha Sahrawat,Adv.
Ms. Tahira Karajawala,Adv.
Mr. Arjun Sharma,Adv.
Mr. Karanveer Singh anand,Adv.
Mr. Tushar Hathiramani,Adv.
Ms. Pracheta Kar,Adv.
Mr. Aditya Sidhra,Adv.
Mr. Nadeem Afroz,Adv.
M/S. Karanjawala & Co., AOR

NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. 10404 EXPIRY DT. 24/10/2028 GOVERNMENT OF INDIA

Mr. Navroz Seervai,Sr.Adv.
Mr. Siddharth Bhatnagar,Sr.Adv.
Ms. Nandini Gore,Adv.
Mr. Rohan Kelkar,Adv.
Ms. Natasha Sahrawat,Adv.
Ms. Tahira Karajawala,Adv.
Mr. Arjun Sharma,Adv.
Mr. Karanveer Singh anand,Adv.
Ms. Pracheta Kar,Adv.
Mr. Aditya Sidhra,Adv.
Mr. Nadeem Afroz,Adv.

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M/S. Karanjawala & Co., AOR

For Respondent(s) Dr. A.M. Singhvi, Sr. Adv
Mr. Shyam Divan, Sr. Adv
Mr. Milind Sathe, Sr. Adv
Mr. Mahesh Agarwal, Adv
Ms. Hemlata Jain, Adv
Mr. Ankur Saigal, Adv
Mr. Parul Shukla, Adv
Mr. Rohan Talwar, Adv
Mr. E. C. Agrawala, AOR

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Abhimanyu Bhandari, Adv.
Ms. Rooh-e-hina Dua, AOR
Mr. Avishkar Singhvi, Adv.
Ms. Ananya Sikri, Adv.
Mr. Akarsh Sharma, Adv.

Ms. Ranjeeta Rohatgi, AOR
Ms. Purnima Bhat, AOR
Mr. Kaushik Poddar, AOR

UPON hearing the counsel the Court made the following

O R D E R

SLP(C)Nos.31982-31983/2013:

These Special Leave Petitions are disposed of in terms of the judgment dated 4th October, 2019 passed by this Court. Pending application(s), if any, shall stand disposed of.

R.P.(C) No.2856/2015 In C.A.No.3396/2015:

The review petition is disposed of in terms of the signed order. Pending application(s), if any, shall stand disposed of.

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SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

(B.Parvathi)
Court Master

(Anand Prakash)
Assistant Registrar

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(Revised Signed order is placed on the file)

ITEM NO.27 COURT NO.5 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).31982-31983/2013

(Arising out of impugned final judgment and order dated 20-09-2013 in SN No.414/2008 19-09-2013 in AN No.414/2008 passed by the High Court Of Judicature At Bombay)

NUSLI NEVILLE WADIA Petitioner(s)

VERSUS

IVORY PROPERTIES AND HOTELS PVT. LTD. & ORS. Respondent(s)

WITH
R.P.(C) No.2856/2015 In C.A. No.3396/2015 (III)

Date : 06-05-2022 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Darius J.Khambata,Sr.Adv.
Mr. Siddharth Bhatnagar,Sr.Adv.
Ms. Nandini Gore,Adv.
Mr. Rohan Kelkar,Adv.
Ms. Natasha Sahrawat,Adv.
Ms. Tahira Karajawala,Adv.
Mr. Arjun Sharma,Adv.
Mr. Karanveer Singh anand,Adv.
Mr. Tushar Hathiramani,Adv.
Ms. Pracheta Kar,Adv.
Mr. Aditya Sidhra,Adv.
Mr. Nadeem Afroz,Adv.
M/S. Karanjawala & Co., AOR

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Mr. Siddharth Bhatnagar,Sr.Adv.
Ms. Nandini Gore,Adv.
Mr. Rohan Kelkar,Adv.
Ms. Natasha Sahrawat,Adv.
Ms. Tahira Karajawala,Adv.
Mr. Arjun Sharma,Adv.
Mr. Karanveer Singh anand,Adv.
Ms. Pracheta Kar,Adv.
Mr. Aditya Sidhra,Adv.
Mr. Nadeem Afroz,Adv.
M/S. Karanjawala & Co., AOR

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For Respondent(s) Dr. A.M. Singhvi, Sr. Adv
Mr. Shyam Divan, Sr. Adv
Mr. Milind Sathe, Sr. Adv
Mr. Mahesh Agarwal, Adv
Ms. Hemlata Jain, Adv
Mr. Ankur Saigal, Adv
Mr. Parul Shukla, Adv
Mr. Rohan Talwar, Adv
Mr. E. C. Agrawala, AOR

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Abhimanyu Bhandari, Adv.
Ms. Rooh-e-hina Dua, AOR
Mr. Avishkar Singhvi, Adv.
Ms. Ananya Sikri, Adv.
Mr. Akarsh Sharma, Adv.

Ms. Ranjeeta Rohatgi, AOR
Ms. Purnima Bhat, AOR
Mr. Kaushik Poddar, AOR

UPON hearing the counsel the Court made the following

O R D E R

SLP(C)Nos.31982-31983/2013:

These Special Leave Petitions are disposed of in terms of the judgment dated 4th October, 2019 passed by this Court. Pending application(s), if any, shall stand disposed of.

R.P.(C) No.2856/2015 In C.A. No.3396/2015:

The review petition is dismissed in terms of the signed order. Pending application(s), if any, shall stand disposed of.

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SUDHIR S. SONAWANE
NOTARY GOVT. OF INDIA
PUNE

(B.Parvathi)
Court Master

(Anand Prakash)
Assistant Registrar

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

CURATIVE PETITION (CIVIL) NOS. 193-194 OF 2021

IN

REVIEW PETITION (CIVIL) NOS. 1534-1535 of 2020

IN

SPECIAL LEAVE PETITION (CIVIL) NOS. 31982-31983 OF 2013

FERANI HOTELS PRIVATE LIMITED PETITIONER(S)

VERSUS

NUSLI NEVILLE WADIA RESPONDENT(S)

O R D E R

We have gone through the Curative Petitions and the relevant documents. In our opinion, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra vs. Ashok Hurra & Another, reported in 2002 (4) SCC 388. Hence, the Curative Petitions are dismissed.

.....CJI.
[N.V.RAMANA]

.....J.
[UDAY UMESH LALIT]

.....J.
[A.M. KHANWILKAR]

.....J.
[M.R. SHAH]

.....J.
[B.R. GAVAI]

NEW DELHI;
JULY 19, 2022

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NOTARY GOVT. OF INDIA
PUNE

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ITEM NO.1004 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CURATIVE PETITION (C) NOS. 193-194/2021 in
REVIEW PETITION (C) NOS. 1534-1535/2020 in
PETITION FOR SPECIAL LEAVE TO AP (C) No. 31982-31983/2013

FERANI HOTELS PRIVATE LIMITED Petitioner(s)

VERSUS

NUSLI NEVILLE WADIA Respondent(s)

(FOR ADMISSION)

Date : 19-07-2022 This petition was circulated today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE B.R. GAVAI

By Circulation

UPON perusing papers the Court made the following
O R D E R

The Curative Petitions are dismissed in terms of signed order.

(RAJNI MUKHI)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file)

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NOTARY SUDHIR SHRAWAN SONAWANE PUNE REGD. NO. [illegible] EXPIRY OF APPOINTMENT GOVERNMENT OF INDIA

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