

Spl.C.S. 71/2019.

Dayal Agro Vs. MSEB

ORDER BELOW EXH. 84

(Passed on 02.03.2023)

The present application is filed by the plaintiff for deciding the issue of jurisdiction simultaneously with other issues.

2] It is the application of the plaintiff that the present suit is filed for injunction, declaration and recovery of money against the defendant. The defendant is a MSEB office. The defendant appeared in the matter and filed several applications raising objections as to jurisdiction under section 9 A of the Code of Civil Procedure (in short "CPC"). Now as per recent judgments of Hon'ble Supreme Court, the section 9 A is deleted from the Act. As per latest judgment of Vidya Niwas vs. Sanjay, the said controversy referred to the Divisional Bench of Hon'ble Bombay High Court. In view of this judgment the issue of jurisdiction cannot be decided separately and it needs to be decided along with other issue as per Order XIV of the CPC. Relying upon this case law the plaintiff has prayed that the issue of jurisdiction be decided along with the other issues as per Order XIV of the CPC.

3] The defendant MSEB has filed reply to this application and strongly opposed the application. According to them, the preliminary issue has framed long back. The order of this court is binding on the parties. By filing this application the plaintiff cannot take disadvantage and prolong the matter. Further, the interlocutory order operates as res-judicata. The parties have to proceed with the

application. Lastly, the defendant is prayed that the application be rejected.

4] I have heard both the sides. Perused the record. I have also gone through the observations made in the case law referred by the plaintiff i.e. **Vidya Niwas Co-op. Hsg. Soc. Ltd. vs. Sanjay Ramesh Agarwal and Ors**, decided on 22nd February, 2019. In which it is held that, “*Varsha 16/21 52 s 215.1 (1) where consideration of a preliminary issue framed under section 9A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018 (hereinafter, in this section, referred to as “the Amendment Act”), the said issue shall be decided and disposed of by the Court under section 9A, as if the said section 9A has not been deleted;*

iv. Both the First Amendment Act and Second Amendment Act therefore aimed at furthering the rights of litigants to expeditious disposal of the suit a substantial right, and given the considerable pendency of suits, a very meaningful one;

v. As is evident from the Statement of Objects and Reasons of both Amendment Acts, the method of seeking to achieve that objective is inconsistent i.e. the First Amendment Act seeks to do away with Section 9A (subject to transitioning and sun setting provisions) whereas the Second Amendment Act seeks to re-insert Section 9A;

vi. The effect of the Second Amendment Act, is also to re-insert Section 9A partially; it does not altogether delete the provisions of the First Amendment Act; as such, we have two different Acts which seek to achieve a common objective in a contrary and inconsistent manner operating together; this itself is arbitrary and unreasonable in law.”

Further, it is held that, “ *In my view, there are good reasons for a view that it would be advantageous to have the matter heard by a bench of two or more Judges, viz., the effect of the First Amendment Act and Second Amendment Act should be conclusively decided as a matter of public interest; and if a constitutional issue is to be raised with respect to these Acts it would have to be heard by a Division Bench.*”

5] Considering the above observations made by Hon’ble Bombay High Court in the present matter the application under Order 9A of the CPC is filed long back in the year 2004. However, the issue under section 9A is not decided yet. In such circumstances applying the above observations and now as per recent amendment the preliminary issue shall be decided and disposed off under section 9A, as if the said section 9A has not been deleted. In this view the application of the plaintiff is liable to be rejected. Hence, I pass the following order.

ORDER

1. The application is rejected.
2. The issue framed under Order 9A of the CPC will be decided and disposed off as per provisions of Order 9A of the CPC.
3. Costs in cause.

Date: 02.03.2023.

(Smt.A.A.Desai)
6th Jt. Civil Judge Senior Division,
Akola.

- C E R T I F I C A T E -

I hereby certify that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno : S. M. Rothe

Court Name : 6th Jt. Civil Judge (S.D.) & Addl.C.J.M.,
Akola.

Date : 02.03.2023.

Signed by Presiding
Officer on : 02.03.2023.

Uploaded on : 02.03.2023.
