

Spl.C.S.No. 71/2019

Dayal ... vs.. M.S.E.B.

ORDER PASSED BELOW EX.86.

(Passed on : 26/04/2023)

The present application is filed by the plaintiff for seeking permission to lead evidence on preliminary issue.

2. It is the application of the plaintiff that, the present matter has been fixed for hearing on preliminary issue frame under section 9A of C.P.C. The plaintiff had filed application Exh. 33 dated 19-10-2002 seeking amendment of the plaint. Initially the said application was rejected by this court. Thereafter, the plaintiff challenged the said order before the Hon'ble High Court of Bombay bench at Nagpur in Writ Petition No. 1043/2018. The said writ petition was allowed and accordingly, the plaintiff made amendment in the plaint. The plaintiff is having right to make amendment in order to bring the suit within the purview of jurisdiction of the court. Now the plaintiff wants to adduce evidence in support of preliminary issue of jurisdiction.

3. The defendant M.S.E.B has filed reply to the application and strongly opposed. According to the defendant on the point of application under section 9A of C.P.C. is argued before several presiding officers. The plaintiff has filed evidence closed pursis long back. The present application is filed only with a view to prolong the matter. They have prayed that application be rejected with costs.

4. I have perused the record. The record shows that, the plaintiff

and defendant both have filed evidence closed pursis on preliminary issue framed under section 9A of CPC. According to the plaintiff, they have sought amendment in the plaint therefore, they have new right to lead evidence on the preliminary issue. I find no substance in this application as the record shows that, the plaintiff has amended the plaint on 26-07-2019 prior to near about 4 years. In the period of 4 years, the plaintiff never tried to lead the evidence if any. The preliminary issue is framed in the year 2001. The record shows that, the plaintiff only filed the application after application with a view to prolong the matter. In this background, I found no ground to allow the plaintiff to lead evidence. Hence, application is liable to be rejected. Hence, I pass following order .

ORDER

The application at Exh. 86 is rejected.

Date : 26.04.2023.

(Smt. A. A. Desai)
4th Joint Civil Judge Senior Division,
Akola.

CERTIFICATE

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

Name of Steno	:	P. B. Kute,
Court Name	:	4 th Jt. Civil Judge Sr.Dn. Akola
Date	:	26-04-2023
Judgment signed by PO on	:	26-04-2023
Judgment uploaded on	:	27-04-2023