



Shabnoor Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6769 OF 2011

SHABNOOR
AYUB
PATHAN

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Date: 2024.07.18
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1. Govinda Goga Donde
Age 60 Years, Occu: Agriculturist
Residing at Pathardi Taluka,
District Nashik.
2. Huashi Goga Donde @
Huashi Murlidhar Ghatsav
Age 67 Years, Occu: Labour
Residing at Murambital: Igatpuri,
District Nashik.

... Petitioners

V/s.

1. Mayur Ramesh Bora
Age 30 Years, Occu: Service
Residing at 206, Abhyankar Plaza
M.G. Road, Nashik.
2. Manisha Ramesh Bora
Age 27 yrs, Occu: Housewife
Residing at 206, Abhyankar Plaza,
M. G. Road, Nashik.

... Respondents

Mr. Sugandh B. Deshmukh a/w Ms. Karishma Shinde
a/w Mr. Vaibhav Thore, for Petitioners.

Mr. Surel S. Shah, for Respondent Nos.1 to 3.

CORAM : REVATI MOHITE DERE,
AMIT BORKAR, &
GAURI GODSE, JJ.

RESERVED ON : APRIL 19, 2024

PRONOUNCED ON : JULY 18, 2024

JUDGMENT: (Per Amit Borkar, J.)

1. The following question of law has been referred by the learned Single Judge of this Court in the order dated 20 August 2013 for resolution by the Full Bench:

“Whether in exercise of power under Section 9-A of the Code of Civil Procedure, 1908 (for short ‘CPC’), the Trial Court is competent to frame an issue, disposing of the suit in part or the cause of action in part ?”

2. For the determination of the aforesaid question, it is unnecessary to state the history of litigation in detail however a brief reference to the facts noticed in the referral order dated 20 August 2013 would suffice.

3. In Regular Civil Suit No.45 of 2011, the plaintiffs claim relief of declaration that the sale deed dated 2 August 1965 be declared illegal and not binding upon the plaintiffs and defendant Nos.4 to 8 and to cancel the same. By way of prayer clause (b), relief of permanent injunction restraining defendant Nos.1 to 3 from illegally dispossessing the plaintiffs and defendant Nos.4 to 8 from the suit property was claimed.

4. On 3 May 2011, defendants Nos.1 to 3 filed an application to frame a preliminary issue of limitation. The Trial Court, by order dated 9 June 2011, framed the issue of limitation in the exercise of power under Section 9-A of the CPC. The plaintiffs, therefore, filed

the present writ petition challenging the order framing the issue of limitation in a suit for specific performance and injunction as a preliminary issue under Section 9-A of the CPC.

5. Upon hearing submissions of the parties to the petition, the learned Single Judge of this Court found himself unable to agree with the view expressed by the Division Bench of this Court in the case of **Ferani Hotels Private Limited Vs. Nusli Nevile Wadia & Ors.** reported in 2013 (3) Bom. C.R. 699. The controversy that stood raised before the Division Bench in the case of **Ferani Hotels Private Limited** (Supra) arose out of an objection raised before the Single Judge of this Court in a suit as to the maintainability of the suit on the ground of bar of limitation. The Single Judge accepted the defendants' request and framed an issue of limitation under Section 9-A of the CPC; however, refused to grant ad-interim relief exercising power under Section 9-A of the CPC. Therefore, both plaintiffs and defendants filed appeals before the Division Bench. In the said appeals, on behalf of the plaintiffs, it was urged that an objection as to the jurisdiction of the nature contemplated by sub-Section (1) of Section 9 is an objection that, if upheld, must be capable of disposing of the entire suit. In view of the reasons in paragraph 20 of the judgment, the Division Bench repelled the submission on behalf of the plaintiffs, holding that it would be open for the Trial Court while exercising power under Section 9-A of the CPC to dismiss part of the suit or cause of action in part.

6. While considering submissions in the present petition, the Single Judge found himself unable to accept the view expressed by

the Division Bench of this Court in the case of **Ferani Hotels Private Limited** (Supra), and therefore in exercise of power under Rule 7 of Chapter I of the Bombay High Court Appellate Side Rules, 1960, directed aforesaid question to be placed before Hon'ble the Chief Justice for constitution of appropriate Bench as deemed fit by Hon'ble the Chief Justice. Accordingly, the Hon'ble the Chief Justice has constituted the present Bench for the determination of the issue referred to above.

7. At the outset, Advocate for Petitioners submitted that in view of the amendment to Section 9-A of the CPC having the effect of deletion of provision, the issue referred need not be answered. He further submitted that even if the Court holds that suit is barred by limitation, it only disposes of suit or cause of action in part in respect of relief of specific performance, but relief of permanent injunction would survive and, therefore, the Trial Court can not frame such issue in exercise of power under Section 9-A of the CPC, which shall not completely dispose of the suit.

8. Learned Counsel for the defendants relying on the Division Bench's judgment in the case of **Ferani Hotels Private Limited** (Supra) submitted that the Trial Court is competent to exercise its power under Section 9-A of the CPC to frame a preliminary issue which can dispose of the suit partly or cause of action in part.

9. We have considered the rival submissions. For the purpose of examination of preliminary objection regarding the effect of repeal of Section 9-A on present reference, it is necessary to set out clause (3) of the repealing Act, which reads as under:

“3. Notwithstanding the deletion of section 9-A of the principal Act,—(1) where consideration of a preliminary issue framed under section 9-A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Ordinance, 2018 (hereinafter, in this section, referred to as “the Amendment Ordinance”), the said issue shall be deemed to be an issue framed under Order XIV of the principal Act and shall be decided by the Court, as it deems fit, along with all other issues, at the time of final disposal of the suit itself :

Provided that, the evidence, if any, led by any party or parties to the suit, on the preliminary issue so framed under section 9-A, shall be considered by the Court along with evidence, if any, led on other issues in the suit, at the time of final disposal of the suit itself ;

(2) in all the cases, where a preliminary issue framed under section 9-A has been decided, holding that the court has jurisdiction to entertain the suit, and a challenge to such decision is pending before a revisional Court, on the date of commencement of the Amendment Ordinance, such revisional proceedings shall stand abated :

Provided that, where a decree in such suit is appealed from any error, defect, or irregularity in the order upholding jurisdiction shall be treated as one of the grounds of objection in the memorandum of appeal as if it had been included in such memorandum ;

(3) in all cases, where a preliminary issue framed under section 9-A has been decided, holding that the Court has no jurisdiction to entertain the suit, and a challenge to such decision is pending before an appellate or revisional Court, on the date of commencement of the

Amendment Ordinance, such appellate or revisional proceedings shall continue as if the Amendment Ordinance has not been enacted and section 9A has not been deleted:

Provided that, in case the appellate or revisional Court, while partly allowing such appeal or revision, remands the matter to the trial Court for reconsideration of the preliminary issue so framed under section 9-A, upon receipt of these proceedings by the trial Court, all the provisions of the principal Act shall apply ;

(4) in all cases, where an order granting an ad-interim relief has been passed under sub-section (2) of section 9-A prior to its deletion, such order shall be deemed to be an ad-interim order made under Order XXXIX of the principal Act and the Court shall, at the time of deciding the application in which such an order is made, either confirm or vacate or modify such order.

10. On careful reading of aforesaid clauses, it is evident that in a case where consideration of preliminary issue framed under Section 9-A of the CPC is pending on the date of commencement of the said Act, the issue of jurisdiction shall be decided by the Court as if the issue was framed under Order 14 of the principal Act. However, in relation to the cases contemplated by sub-clause (3) of Section 3 of repealing Act, where the Trial Court decided preliminary issue framed under Section 9-A of the CPC holding that the Court had no jurisdiction and challenge to such decision is pending before the Superior Court on the date of amendment, such appellate or revisional proceedings have been continued by the amendment Act. The Apex Court, in the case of **Nusli Neville Wadia Vs. Ivory**

Properties And Others, reported in (2020) 6 SCC 557, has clarified the position by observing as under:

“84. Section 2 of Maharashtra Second Amendment Act, 2018 which provides that where consideration of preliminary issue framed under section 9-A is pending on the date of commencement of the CPC, the said issue shall be decided and disposed of by the court under section 9A as if the provision under section 9-A has not been deleted, does not change the legal scenario as to what can be decided as a preliminary issue under section 9-A, CPC, as applicable in Maharashtra. The saving created by the provision of section 2 where consideration of preliminary issue framed under section 9-A is pending on the date of commencement of the Code of Civil Procedure (Maharashtra Amendment) Act, 2018, can be decided only if it comes within the parameters as found by us on the interpretation of section 9-A. We reiterate that no issue can be decided only under the guise of the provision that it has been framed under section 9-A and was pending consideration on the date of commencement of the (Maharashtra Amendment) Act, 2018. The reference is answered accordingly.”

11. Therefore, we are unable to accept the submission on behalf of the Petitioners that the question referred by the Hon’ble the Chief Justice has become academic.

12. Before we proceed to adjudicate the referred question, we should look at the statement of objects and reasons for enactment of Section 9-A, which was introduced in 1970. The statement of objects and reasons from the Gazette dated 15 December 1969 is as follows:

“Statement of Objects and Reasons

The effect of the judgment of the High Court in *Institute Indo-Portuguese vs. Borges*, is that the Bombay City Civil Court to grant 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 7-9-1961 in Appeal No.191 of 1960, it has been the practice of the City Court to adjourn a notice of motion for an 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. This 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 interim relief, the Court shall determine that question first.

Nagpur, dated 6-12-1969

S.K. WANKHEDE
Minister for Law.

Nagpur dated 15-12-1969

S.H. BELAVADI
Secretary Maharashtra
Legislative Assembly.”

13. Insertion of Section 9-A of the CPC in the State of Maharashtra was necessitated by the practice of filing suits without prior notice as mandated under Section 80 of the CPC. This loophole permitted plaintiffs to withdraw and re-file their suits following the notice period, during which Courts were issuing

interim injunctions without deliberating on jurisdictional competence. This resulted in the exploitation of the legal framework. Consequently, Section 9-A was introduced to mandate that the question of jurisdiction be resolved at the outset when considering applications for interim relief. The original provisions of Section 9-A of the CPC introduced in 1970 which are 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) 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 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. 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.”

14. In 1977, Section 9-A was re-introduced with the same purpose but slightly revised. The statement of objects and reasons from 1977 explains the reintroduction of amendment as is hereunder:

“Statement of Objects and Reasons

The Code of Civil Procedure, 1908 (5 of 1908) has been amended, in its application to the State of Maharashtra, by the Code of Civil Procedure (Hyderabad Amendment) Act, 1953 (Hyd. 11 of 1953), read with the Code of Civil Procedure (Extension of Hyderabad Amendment) Act, 1964 (Mah.6 of 1965) and by the Code of Civil Procedure (Maharashtra Amendment) Act, 1970 (Mah. 25 of 1970). By the first State Act of 1953, the proviso to section 60(1) is amended to exempt the amounts payable under the policies issued in pursuance of the Rules for the Hyderabad State Life Insurance and Provident Fund from attachment in execution of a decree. By the second State Act of 1970, a new section 9–A has been inserted for providing that whereby an application, in which interim relief is sought or is sought to be set aside in any suit and objection to jurisdiction is taken, such issue should be decided by the Court as a preliminary issue at the hearing of the application. The Code also stands amended in its application to the Bombay area of this State by the Code of Civil Procedure (Bombay Amendment) Act, 1948 (Bom. LX of 1948) and in its application to the Hyderabad area of this State by the Code of Civil Procedure (Hyderabad Second Amendment) Act, 1953 (Hyd. XVIII of 1953). The first State Act of 1948 amends the proviso to section 60(1) to exempt from attachment, stipends, and gratuities allowed to pensioners of a local authority. The second State Act of 1953 also amends the proviso to section 60(1) to exempt from attachment, the pension granted or continued by the Central Government, the Government of the former State of Hyderabad or any other State Government on account of past services or present infirmities or as a compassionate allowance.

2. The Code has been extensively amended by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976) enacted by Parliament. Section 97 of this Amendment Act provides inter alia that any amendments made in the Code by

a State Legislature before the commencement of that 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, are 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 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 9-A inserted by it, to make way for re-enacting by clause 3 the same section in a slightly revised form.

Clause 4.----- As the amendment made by the State Act of 1948 is included in the proviso to section 60(1) by the Central Amendment Act of 1976, it is proposed to repeal this Act and the amendment made by it.

Clauses 5 and 6.----- Clause 5 formally repeals the two—State Acts of 1953 by which the proviso to section 60(1) was amended to give some additional exemptions from attachment. Clause 6 brings back these amendments with the necessary drafting changes.

Hussain M. Dalwai.
Minister for Law and Judiciary.”

Dated 5-10-1977.

15. Section 9-A of the CPC was re-introduced in the year 1977 enacting a *non obstante* clause overriding other laws and stated:

“9-A. Whereof 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 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.”

16. Reintroducing the Civil Procedure Code (Maharashtra

Amendment) in 1977 added a *non obstante* clause stating that the provisions of Section 9-A of the CPC shall not be affected by any other law for the time being in force and emphasised the importance of determining jurisdictional issues as preliminary issues to prevent abuse of process and ensure efficient disposal of suit(s). This amendment aimed to strengthen the provisions of Section 9-A of the CPC by ensuring that the jurisdictional issues are addressed before granting interim relief, thereby preventing unnecessary delays and abuse of the Court process.

17. The object and purpose of introducing Section 9-A of the Code of Civil Procedure were to address the issue of courts granting interim relief without first determining their jurisdiction over the suit. The purpose and object of Section 9-A of the Code of Civil Procedure are to prevent the abuse of the court process by ensuring that the jurisdiction of the court to entertain a suit is determined before granting interim relief. There was a practice where plaintiffs would file suits without serving the necessary notice under Section 80 of the CPC. Despite this procedural deficiency, courts were granting interim relief, such as injunctions, without examining whether they had jurisdiction to hear the suit. This led to potential abuse of the legal process. Section 9-A was introduced to ensure that if an objection to the court's jurisdiction were raised during the hearing of any application for interim relief, the court would have to decide on the jurisdiction issue as a preliminary issue. This meant that the court could not grant interim relief without first adjudicating its authority to hear the case if such an objection is raised during the pendency of an interim relief application. The

provision aimed to make the judicial process more efficient by requiring that jurisdictional issues be resolved at the outset, thereby preventing unnecessary delays and ensuring that the competent court heard suits from the beginning. By addressing jurisdictional objections upfront, the law sought to maintain the integrity of legal proceedings and uphold the principle that a court must have the jurisdiction to adjudicate a suit before granting any form of interim relief. Addressing jurisdictional issues at the preliminary stage of the suit helps avoid piecemeal adjudication and multiple rounds of jurisdictional challenges. This promotes efficiency and reduces delays in the judicial process. The introduction of Section 9-A was to ensure that jurisdictional issues are addressed promptly and prevent the misuse of interim relief provisions, thereby streamlining the legal process and preserving the proper administration of justice. Section 9-A of the CPC is intended to ensure that the jurisdiction of the court is determined before granting interim relief promoting efficient disposal of suits. By granting interim relief pending the determination of jurisdictional issues, the court can prevent the abuse of interim relief, which might otherwise lead to prolonged litigation and unnecessary delays. This helps to avoid duplication of work and unnecessary challenges in the superior courts. The section is also designed to prevent plaintiffs from dragging defendants to court without a valid notice under Section 80 of the CPC, which can lead to abuse of the court process.

18. Keeping in mind the object and purpose of the introduction of section 9-A, it is necessary to consider the respondent's submission that the trial court can decide an objection of a party to the suit

having the effect of disposing of the suit or cause of action in part. To analyse Respondents' submission the width and amplitude of expression "suit" in section 9-A requires judicial scrutiny. The term "suit" is not defined in the CPC, but it is generally accepted to include all actions taken by a person to enforce a legal right granted by law. The term "suit" generally refers to the entire legal action, not a part of it. Even as per Contextual Interpretation, the context in which the term 'suit' is used within Section 9-A is important. The term "suit" in the Code of Civil Procedure refers to a legal action brought by one or more parties against another. It is a civil proceeding instituted by the presentation of a plaint, which is a statement of a cause of action in writing. The relief sought is specifically stated in the plaint. In the context of Section 9-A, expression "such a suit" means a suit that is properly instituted by the presentation of a plaint, which outlines the facts of the case, the legal grounds for the claim, and the relief sought. This expression ensures that the court has jurisdiction to entertain the suit and that the suit is properly framed.

19. Section 9-A of the CPC was introduced by the Maharashtra Amendment and provides for the determination of preliminary issues, specifically the jurisdiction of the court, as a preliminary issue before the trial of the suit on merits. The exact wording and intent behind this provision play a crucial role in its interpretation. According to the Plain Meaning Rule, words in a statute should be given their ordinary, literal meaning unless this leads to an absurd result. Moreover, substituting the expression "suit" with "part of suit" in section 9-A of the Civil Procedure Code would amount to an

addition of words in the statute that involve a nuanced understanding of statutory interpretation. Such interpretation would run counter to settled canons of interpretation of statutes that the intention of the legislature is primarily to be gathered from the language used in a statute. A construction that requires the addition or substitution of words or the rejection of words as meaningless must be avoided. Courts cannot aid the legislature's defective phrasing of an Act by adding or mending deficiencies left in the Act. The intention of the legislature is to be ascertained by considering the language employed in the statute, which is the determinative factor of legislative intent. It is not competent for any Court to proceed upon the assumption that the Legislature has made a mistake. The Court cannot add and amend or by construction, make up deficiencies which are left in the Act. Even where there is a *casus omissus*, it is for others than the Courts to remedy the defect.

20. The language of section 9-A does not explicitly mention the rejection of parts of a suit. The term "suit", as used in the section, refers to the whole suit filed by the plaintiff. Substituting the expression "suit" with "part of suit" in Section 9-A of the Code of Civil Procedure would indeed alter the meaning and scope of the provision. The term "suit" generally refers to a complete legal action brought before a court. If "part of suit" is substituted, it could potentially limit the scope to specific segments or components of a suit rather than the entire suit itself. The term "suit" is a well-defined legal concept. If the original provision was intended to address matters within the broader context of the entire suit,

changing it to "part of suit" will restrict its application or alter its intent. Courts have historically interpreted "suit" in its broader sense. Changing it to "part of suit" might affect existing legal precedents and judicial interpretations that have developed around the term "suit. If the provision is meant to expedite the process by determining jurisdictional issues early, there is no reason why expression "suit" should include any 'part of the suit' that pertains to jurisdictional questions.

21. The term “part of suit” could imply a division or segment of the suit, potentially leading to interpreting jurisdictional questions at different stages or for different parts of the suit separately. The intent behind Section 9-A is to ensure that jurisdictional objections are dealt with at an early stage to prevent unnecessary prolongation of litigation. Interpreting "suit" to include "part of suit" might alter this intent by fragmenting the process. The procedural rules in the CPC are designed to ensure efficiency and fairness. Interpreting "suit" to include "part of suit" might complicate the process by requiring courts to address jurisdictional issues in a piecemeal fashion. Substituting "suit" with "part of suit" in Section 9-A of the CPC would fundamentally alter the scope and application of the provision. The current language mandates addressing jurisdictional objections at the outset of the entire suit, whereas the interpretation of including “part of suit or part of cause of action” could lead to addressing such objections in a fragmented manner, potentially defeating the legislative intent of resolving jurisdictional issues efficiently and early.

22. In our opinion, adding or interpreting "part of suit or cause of action" in place of "suit" might duplicate the decision-making process by implying that jurisdictional challenges could be fragmented across different parts of the suit rather than addressing jurisdiction comprehensively at the outset. Addressing jurisdictional issues at the preliminary stage for the entire suit helps avoid piecemeal litigation and multiple rounds of jurisdictional challenges. This promotes efficiency and reduces delays in the judicial process. The emphasis on determining the court's jurisdiction over the entire suit aligns with the fundamental legal principles, which ensures that the court has to hear and decide the jurisdictional issues in their entirety before proceeding with any substantive issues or granting interim relief. Accepting Respondents' submission could undermine the objective of Section 9-A, which is to resolve jurisdictional objections comprehensively and at the earliest stage. Moreover, adopting interpretation of expression "suit" does not include "part of a suit" ensures that Section 9-A maintains a clear, efficient, and comprehensive approach to determining jurisdictional issues, thereby upholding the integrity and smooth functioning of the judicial process.

23. On meaningful reading of Section 9-A of the CPC, it appears that the said provision enables any party to the suit, at the time of hearing of the application of interim relief in a suit, to raise an objection of jurisdiction. The provision requires the pendency of an application for interim relief in a suit, an objection raised by any party to such suit in the context of the decision of the issue involved. It is necessary to emphasise two expressions in Section 9-

A of the CPC, which are; "made in any suit" and "such a suit". The word 'such' in expression "such a suit" derives its colour from the earlier expression "made in any suit". The word 'such' came for consideration before a Constitution Bench of the Apex Court in the case of **Central Bank of India Vs. Ravindra And Ors.** reported in 2002 (1) SCC 367, wherein the Apex Court was considering meaning to be assigned to the phrases "on the principal sum adjudged" and "such principal sum" as occurring in the opening part of the sub-section (1) of Section 34 of the CPC. In the light of submissions made before the Apex Court, it was held in paragraphs 42 and 43 as under:

“42.Ordinarily, a word or expression used at several places in one enactment should be assigned the same meaning so as to avoid “a head-on clash” between two meanings assigned to the same word or expression occurring at two places in the same enactment. It should not be lightly assumed that “Parliament had given with one hand what it took away with the other” (see *Principles of Statutory Interpretation*, Justice G.P. Singh, 7th Edn. 1999, p. 113). That construction is to be rejected which will introduce uncertainty, friction or confusion into the working of the system (*ibid*, p. 119). While embarking upon interpretation of words and expressions used in a statute it is possible to find a situation when the same word or expression may have somewhat different meaning at different places depending on the subject or context. This is however an exception which can be resorted to only in the event of repugnancy in the subject or context being spelled out. It has been the consistent view of the Supreme Court that when the legislature used same word or expression in different parts of the same section or statute, there is a presumption that the word is used in the

same sense throughout (*ibid*, p. 263). More correct statement of the rule is, as held by the House of Lords in *Farrell v. Alexander* [(1976) 2 All ER 721 : 1977 AC 59 : (1976) 3 WLR 145 (HL)] All ER at p. 736*b*, “where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning”. The court having accepted invitation to embark upon interpretative expedition shall identify on its radar the contextual use of the word or expression and then determine its direction avoiding collision with icebergs of inconsistency and repugnancy.

43. *Webster* defines “such” as “having the particular quality or character specified; certain; *representing the object as already particularised* in terms which are not mentioned”. In *New Webster's Dictionary and Thesaurus*, meaning of “such” is given as “of a kind previously or about to be mentioned or implied; of the same quality as something just mentioned (used to avoid the repetition of one word twice in a sentence); of a degree or quantity stated or implicit; the same as something just mentioned (used to avoid repetition of one word twice in a sentence); that part of something just stated or about to be stated”. Thus, generally speaking, the use of the word “such” as an adjective prefixed to a noun is indicative of the draftsman's intention that he is assigning the same meaning or characteristic to the noun as has been previously indicated or that he is referring to something which has been said before. This principle has all the more vigorous application when the two places employing the same expression, at the earlier place the expression having been defined or characterised and at the latter place having been qualified by use of the word “such”, are situated in close proximity.”

24. It is, therefore, necessary to assign the same meaning or characteristic to the word 'suit' as assigned in the first part of sub-

section (1) of Section 9-A of the CPC, which requires pendency of an application for interim relief 'made in any suit'. Pendency of such application seeking interim relief of injunction, attachment before judgment of appointment of receiver in a suit contemplates entire suit and not part of suit, for the purpose of grant of interim relief. The expression 'made in any suit' in the first part of sub-section (1) of Section 9-A of the CPC undoubtedly refers to and contemplates 'entire suit' and, therefore, the expression 'such suit' in the later part of sub-section (1) of Section 9-A of the CPC needs to be assigned same meaning as contemplated in the earlier part.

25. The expression "such a suit" in the second part of Section 9-A of the Code of Civil Procedure refers to a suit instituted by the presentation of a plaint. This expression is crucial in understanding the scope and application of Section 9-A, which deals with the jurisdiction of the court to entertain a suit. The expression "such a suit" in Section 9-A of the Code of Civil Procedure carries significant importance in the context of determining jurisdictional issues during the hearing of applications for interim relief. The phrase "such a suit" directly refers to the specific suit in which the application for interim relief has been made and where an objection to the court's jurisdiction has been raised. This ensures that the jurisdictional inquiry is precisely targeted at the particular suit under consideration preventing any ambiguity. By using expression "such a suit," the provision makes it clear that the court must determine its jurisdiction specifically for the suit in which the interim relief is sought. This clarity helps to ensure that jurisdictional issues are resolved precisely and without confusion

about which suit is being referred to. The expression mandates that the court must comprehensively address the jurisdictional question related to the entire suit before proceeding with any interim orders. This prevents courts from making interim decisions without first confirming their authority to adjudicate the matter, thereby ensuring expeditious disposal of jurisdictional issues. The term "such a suit" confines the scope of preliminary objections to the jurisdiction strictly to the entire suit at hand. This prevents parties from raising partial jurisdictional issues, ensuring that objections are relevant and specific to the suit as a whole. Using "such a suit" helps streamline judicial proceedings by ensuring that jurisdictional issues in their entirety are tackled early and specifically, thus avoiding unnecessary delays and potential re-litigation on jurisdictional grounds later in the suit. The expression aligns with the legislative intent of Section 9-A, which is to prevent the abuse of the interim relief process by ensuring that courts only grant such relief if they have proper jurisdiction over the entire suit. It reflects a clear legislative intent to prioritise jurisdictional clarity on the entire suit at the earliest stage possible. The expression "such a suit" in Section 9-A of the CPC is significant because it provides specificity, clarity, and focus in the jurisdictional determination process, ensuring that the court addresses jurisdictional objections explicitly and comprehensively for the suit as a whole in question before granting any interim relief.

26. Moreover, three Judges Bench in **Nusli Neville Wadia** (supra) on a reference for consideration of correctness of its earlier decision in the case of **Foreshore Co-operative Housing Society Ltd. Vs.**

Praveen D. Desai (D) Thr. Lrs. & Ors. reported in 2015 (6) SCC 412 was interpreting the meaning of the expression "jurisdiction under Section 9-A of the CPC" as to whether such expression is wide enough to include the issue of limitation. The Apex Court held the decision in the case of **Foreshore Co-operative Housing Society Ltd.** (Supra) cannot be said to be laying down law correctly. It was held that under the provisions of Section 9-A and Order 14 Rule 2 of the CPC, it is open to decide preliminary issues if it is a pure question of law and not a mixed question of law and fact by recording evidence. While holding so, the Apex Court in paragraph 84 of its judgment overruled the judgment in the case of **Ferani Hotels Private Limited** (Supra) observing that the said judgment cannot be said to be laying down law correctly in regard to the scope of Section 9-A of the CPC as applicable in the State of Maharashtra. Therefore, the basis of referring correctness of view expressed by the Division Bench in the case of **Ferani Hotels Private Limited** (Supra) stood extinguished. Hence, the view taken by the Division Bench of this Court in the case of **Ferani Hotels Private Limited** (Supra) holding that Section 9-A enables the Trial Court to frame issue under the said provision on an objection to jurisdiction can be framed, even if it does not result in disposal of the entire suit or cause of action is no longer a good law.

27. Another factor that lends support to the petitioner's contention is the language of Order 14, Rule 2 of the CPC, which 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.]”

28. Sub-rule (2) of Rule 2 of Order 14 confers power on the Court to adjudicate issues relating to the jurisdiction of the Court or such bar created by any law for the time being in force which has the effect of disposing of “any part thereof”. The expression “any part” thereto occurring in sub-rule (2) of Rule 2 of Order 14 of the CPC is conspicuously absent in Section 9-A of the CPC, which provides an indication that what was intended by the Legislature at the time of introduction of Section 9-A of the CPC was disposal of suit in its entirety and not part of the suit.

29. For the reasons assigned above, we are of the view that while exercising power under Section 9-A of the CPC, the Trial Court cannot frame an issue which has the effect of disposing of suit in part or cause of action in part. It is therefore held that while exercising power under Section 9-A of the CPC, the Trial Court can

frame an issue of jurisdiction only if result of such issue would dispose of the suit or cause of action in its entirety. The question referred, therefore, is answered in negative.

30. With the aforesaid answer, the matter is sent back to the Single Judge for a decision in accordance with the law.

(REVATI MOHITE DERE, J.)

(AMIT BORKAR, J.)

(GAURI GODSE, J.)