

(2008) 03 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 2766 of 2005

Satpuda Tapi Parisar Sahakari Sakhar Karkhana Ltd.

APPELLANT

Vs

Jagruti Industries and Another

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 51
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28
Civil Procedure (Maharashtra Amendment) Act, 1977 — Section 9A
Civil Procedure Code Amendment Act, 1999 — Section 32
Civil Procedure Code Amendment Act, 2002 — Section 16
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 1(5), Order 14 Rule 2, Order 14 Rule 2(1), Order 14 Rule 2(2)
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Article 113
Maharashtra Co-operative Societies Act, 1960 — Section 91
Partnership Act, 1932 — Section 69

Citation : (2008) 5 BomCR 284 : (2008) 4 MhLj 471

Hon'ble Judges : Swatanter Kumar, C.J;R.M. Borde, J

Bench : Division Bench

Advocate : Anil Kasliwal, instructed by J.R. Shah, for the Appellant; P.M. Shah, instructed by Girish Mane, for the Respondent

Judgement

Swatanter Kumar, C.J.—In the case of Ujwalaben Mahindra Shah and Another Vs. Kesharchand Gulabchand and Others, , learned single Judge of this Court at Aurangabad Bench took the view that objection with regard to maintainability of a suit, on the plea that the plaintiff, a partnership firm, was not a registered partnership firm and thus the suit was hit by the provisions of Section 69 of the Partnership Act, 1932, was not a pure question of law and thus could not be tried and decided as a preliminary issue. In this case, the objections of the defendants in the suit was that there was no firm in the plaintiffs name registered with the Registrar of Firms at the time of filing of the suit and a firm with the name of "M/s Kesharchand Gulabchand Munot" was in existence and subsequent to the filing of the suit, the plaintiff had approached the Registrar of Firms for deletion of the

name "Munot" from the firm's name. Thus, the suit was not maintainable and the trial Court ought to have taken note of the fact and decided it as a preliminary issue. On the pleadings of the parties in that suit, the following issue was framed.

Does plaintiff prove that it is a registered partnership firm with Registrar of Firms?

The application filed by the defendants in the suit for deciding this issue as a preliminary issue was rejected by the learned trial Court vide its order dated 10th April, 2000 which was impugned before the High Court. The learned single Judge noticed difference of opinion between two learned single Judges" in the case of Kranti Mohan Guruprasad Mehra and Anr. v. Fatehchand Vasuram Behal 1983 Mh.L.J. 141 and the view of another single Judge in the case of Maharashtra State Warehousing Corporation Ltd. Vs. Bhujang Krishnaji Kohale, , and also discussing the impact of Section 9-A of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") by Maharashtra State amendment to the Code held that this issue was not with regard to the jurisdiction of the Court but maintainability of the suit before the Court and as such could not be tried as a preliminary issue at the threshold. Resultantly, the revision application was dismissed.

2. In the case of Shri Arjun Dada Gadage Vs. Mallappa Gurappa Chougule and Subhashchandra Bhau Shahpure, Secretary, Shedshal Shikshan Prasarak Mandal, , another learned single Judge of the Court, while referring to the cases of Meher Singh Vs. Deepak Sawhny and Another, and SmithKline Beecham Consumer Healthcare GMBH and Others Vs. Hindustan Lever Limited and Another, , expressed a somewhat divergent view and held that the provisions of Section 9-A of the Code, as applicable to the State of Maharashtra, was not in conflict with the provisions of Order 14 of the Code. In the appeal filed before the Appellate Court, an objection was raised that the presentation of the suit before the Court was barred as the plaintiff had not obtained consent of the Charity Commissioner as required by Section 51 of the Bombay Public Trusts Act. The Appellate Court accepted the contention which resulted in filing the writ petition before the High Court. In the writ petition, the High Court took the view that the trial Court was obliged to decide the issue of jurisdiction before deciding the application for interim relief application. The suit as presented being barred by jurisdiction, the issue ought to have been framed and decided at the very threshold and before deciding the interim relief application. The trial Court was thus directed to decide the issue expeditiously.

3. Somewhat similar view was taken earlier by a single Judge of this Court in the case of Shakuntala Balwant Gadgil v. Shubhada Suhas Kulkarni 1985 Mh.L.J. 77 : 1985(2) Bom.C.R. 231. While referring to Section 9-A of the Code and the objection taken by the defendants in the suit that the suit was not maintainable, the Court had no jurisdiction to try the suit on the ground that the provisions of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, does not apply to those premises and termination of tenancy was essential. On the

pleadings of the parties, the trial Court had framed, amongst others, the following issue.

Whether the plaintiff proves that the Bombay Rents Act is not applicable to the suit premises?

The request of the defendant that the said issue be tried as a preliminary issue expeditiously, the Court even framed an additional issue as to whether the Court had jurisdiction u/s 28 of the Rent Act or its ordinary jurisdiction under the Transfer of Property Act. The application was dismissed by the learned trial Judge. The Court held that the trial Judge had taken a hyper-technical view of the matter, though u/s 9-A of the Code it may not be strictly incumbent upon the Court to try a particular issue as a preliminary issue but the Court should not have lost sight of the fact that the Court always had jurisdiction to treat a particular issue as a preliminary issue if it goes to the root of the jurisdiction of the Court. The question of jurisdiction is to be decided by the Court as it would decide the suit finally and once and for all. In these circumstances, while making the rule absolute and setting aside the order of the learned Judge, the learned single Judge remanded the matter for the issue being tried as a preliminary issue expeditiously.

4. The facts giving rise to the filing of present petition under Article 227 of the Constitution of India before the learned single Judge were that a suit for recovery of Rs. 6,10,748.15 was filed by the plaintiff which was a registered partnership firm. Upon service of summons, the defendants filed their written statement contesting the claim and also took up an objection that the Court had no jurisdiction to decide the suit in view of the provisions of Section 91 of Maharashtra Co-operative Societies Act. Upon pleading of the parties, the Court framed the issues and issue No. 3 read as under:

3. Whether this Court has jurisdiction to decide this suit considering the provisions u/s 91 of the Co-operative Societies Act.

4.1 Thereafter the defendant on 15th June, 2001 filed an application requesting the Court to recast the issues and frame an issue with regard to territorial jurisdiction as the entire transaction had taken place at Nandurbar and the Court at Shrirampur had no territorial jurisdiction to entertain and decide the suit. The defendant also prayed that the issue be tried as a preliminary issue and its determination be done right at the threshold. The trial Court declined the prayer for trying the issue as preliminary issue resulting in filing of the petition before the High Court.

4.2 As already mentioned, the learned single Judge found that the different single Judges of this Court had expressed divergent views and, therefore, referred the following two questions to be answered by the larger Bench.

1. Whether an application for framing of issue regarding jurisdiction whether pecuniary or territorial can be framed at a latter stage and whether the Court is

obliged to decide that issue then as preliminary one?

2. Whether the object of introduction of Section 9-A in the Code can be made applicable to the applications that may be filed at latter stage of the suit?

5. As is clear from the above order of reference, the question in regard to the jurisdiction of the Court to decide the suit in face of bar contained in Section 91 of the Maharashtra Co-operative Societies Act was raised. Thereafter, an application was also filed for taking up the issue of territorial jurisdiction as the transaction had taken place at Nandurbar and the Court at Srirampur had no territorial jurisdiction. As the issues were recasted, the defendant had prayed that the issues be treated as preliminary issues. This application was rejected by the learned Civil Judge who accepted the argument of the plaintiff in the suit that the issue of territorial jurisdiction was an issue of mixed question of fact and law and, therefore, could not be tried as a preliminary issue. In view of Section 9-A, Order 14, Rule 2 of the Code and the various judgments cited, the learned single Judge was persuaded to make a reference to the larger Bench referring the above two questions for answering as questions of law.

6. At the very outset, we may dissect the referred questions into different parts so as to provide answer to the questions of law with clarity. Question No. 1 firstly requires the Court to examine whether an application for framing of issues regarding jurisdiction, pecuniary or territorial, can be filed and should the Court frame issue to that effect even at a later stage. Secondly, whether the Court is obliged to decide that issue as a preliminary one. The second question then, therefore, requires the Court to examine and answer the question as to whether provisions of Section 9-A of the Code can be made applicable to such application which is filed at a later stage of the suit.

7. It needs to be examined as to what is the impact of Order 14, Rule 2 which was introduced in the Code on 1st February, 1977. Section 9-A of the Code was introduced by the State of Maharashtra in the year 1970 by the CPC (Maharashtra Amendment), 1970. However, Maharashtra Amendment Act of 1976 was repealed and Section 9-A was again added in the Code in relation to its application in State of Maharashtra by the CPC (Maharashtra Amendment) Act, 1977 and the same was published in Maharashtra Government Gazette on 9th December, 1977 after having received the assent of the President of India. The other aspect which the Court is required to advert is in the background of answer to the earlier part as to whether object behind provisions of Section 9-A would be applicable to the applications filed at the subsequent stage.

8. (DDDD of Versus). Before we proceed to discuss the other legal facets of the propositions of law referred for answer, we must notice that the view taken by the learned single Judge of this Court in the case of Arjun Dada (supra) was held to be a correct exposition of law by a Division Bench of this Court in the case of Madhuri Prabhakar Patole Vs. Aruna Satishchandra Gaikwad, where the reference was made by the learned single Judge to a larger Bench on the following issue:

Whether Section 9A of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) in relation to its applicability in the State of Maharashtra, stands repealed by Section 32 of the CPC (Amendment Act, 1999) i.e. Central Act No. 46 of 1999 and/or by Section 16 of the CPC (Amendment) Act, 2002 i.e. Central Act No. 22 of 2002?

The Division Bench held that there was no conflict between the orders under the provisions of Order 14, Rule 2 and Section 9A of the Code and it applied the rule of harmonious construction. The Division Bench held as under:

18. Bare reading of the above mentioned two provisions namely Section 9-A and Order 14, Rule 2 indicate that they are not operating in the same field. The same are required to be invoked at different stages. From opening sentence of Section 9A namely "where at the hearing of application relating to ad interim relief in suit, objection to jurisdiction is taken such issue to be decided by the Court as preliminary issue" and further language, namely, "if at the hearing of any application for granting or setting aside the order granting any interim relief, whether by way of stay, injunction, appointment of receiver or otherwise made in any suit, an objection to the jurisdiction of the Court to entertain such suit is taken by way of the parties to the suit, the Court shall proceed to determine at the hearing of such application" it is clear that Section 9A comes into play much earlier than the stage when suit is required to be dealt with by the provisions of Order 14. In fact, if we see the provisions of Order 14, Rule 2 of CPC then we find that there is nothing in the said provision which specifically says that issue with regard to jurisdiction cannot be tried as preliminary issue at any stage. On the contrary, Order 14, Rule 2(2) makes exception to the main rule and says that when issue both of laws and of facts arise in the same suit and Court is of the opinion that the case or many part thereof may be disposed of on an issue of law only it may try that issue first, if that issue relates to jurisdiction of the Court. So, by no stretch of imagination it can be said that the provision of Section 9A is inconsistent with the provision of Order 14, Rule 2. The main object or the underlying idea under both the provisions is that if the relief claimed cannot be granted on the point of jurisdiction then it is better to decide that issue first. We cannot ignore the fact that there is any specific provision in the Central Act laying down procedure as to what should be done at the time of interim relief if objection is taken on the ground of jurisdiction. If any such specific provision would have been in the said Central Act, then it was possible to compare Maharashtra Amendment in respect of Section 9A with such provision but when we find that there is in fact no similar provision in the Central Act, there is no question of any inconsistency with the provisions of Central Act. Even after going through the entire judgment in *Meher Singh v. Deepak Sawhney* reported in 1991(1) Bom.C.R. 107, we do not find that it has been held in the said case that the provision of Section 9-A is inconsistent with the provisions of the Central Act. Merely because the Division Bench observed that there is departure from the procedure it wanted to convey inconsistency. On the contrary, the word "departure" is used to convey that there is deviation from earlier procedure.

Deviation does not necessarily mean inconsistency.

...

20. Applying the above principle also it can very well be said that as there was no specific provision in the Central Act for dealing with the objection regarding jurisdiction of the Court, raised at the time of injunction application or receiver application, State of Maharashtra has made the above mentioned provision of Section 9A. So, it cannot be said that it overlaps any of the provisions of the Central Act.

21. It must be noted that when the provisions of Section 9A of CPC is not at all inconsistent with the Central Act there was in fact no need for the State of Maharashtra to obtain assent of the President. However, we find that such assent was obtained earlier only by way of abundant precaution. This is clear even from the 4th recital of the preamble of the Maharashtra Amendment Act, 1977 wherein it is clearly mentioned that to leave no room for any doubt the said provision was being reintroduced. In other words, reintroduction of Section 9A by the State Legislature and action of obtaining assent from the Hon'ble President was on the principle of "Abundans cautela non nocet". So, merely because such assent is not obtained after coming into force the Central Amendment Act of 1999 and Central Amendment Act of 2002, it cannot be said that the provisions of Section 9A stands repealed by virtue of Sections 32 and 16 of the respective Acts because basically the said provision is not at all inconsistent with any of the provisions of Central Act.

...

23...However, in the case at hand we are of the considered view that basically Section 9A is not at all inconsistent with or repugnant to the provisions of Order 14, Rule 2 of CPC or any other provision of the Central Amendment Act, 1999 or 2002. So, the above cited rulings are of no use to the respondent.

24. Thus, having regard to the position of law and considering the object of Section 9A as well as the object of Order 14, Rule 2 of CPC and applying all the tests to determine as to whether there is any inconsistency between the two statutes, we have no hesitation to hold that Section 9A of Civil Procedure Code, introduced by State of Maharashtra is not at all inconsistent or repugnant with the provisions of Order 14, Rule 2 of the Central Act. On the contrary, it supports and supplements the basic idea of Order 14, Rule 2(2) and provides additional provision to further the cause which does not in any way damages or destroys the provision under Order 14, Rule 2 of the Central Act. We, therefore, endorse the view expressed by the learned Single Judge (Coram : A.M. Khanwilkar, J.) that Section 9A of CPC is not inconsistent with the provision of Order 14, Rule 2 or any other provision in Central Act and as such it cannot be said that Section 9A stands repealed as a result of Sections 32 and 16 of the Central Amendment Act of 1999 and 2002 respectively.

9. The questions of law answered by another Division Bench of this Court in Mehar Singh's case (supra) can also be usefully referred to at this stage itself. The Court was concerned in that case as to whether the parties to a lis should or should not be granted an opportunity to lead evidence while deciding a preliminary issue as contemplated u/s 9A of the CPC (Maharashtra Amendment) Act, 1977. While answering that question, the Court also considered the provisions of Order 14, Rule 2 and held as under.

9. The question, therefore is, when the Legislature directs that objection with regard to jurisdiction is to be decided as a preliminary issue at the time of hearing of the application for grant of interim relief or for vacating interim relief or for appointing Receiver, whether the parties should be permitted to lead evidence. In our view, this question is to be considered in the light of Order XIV, Rule 2 of Civil Procedure Code. Order XIV, Rule 2 of the CPC reads as under:

(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 suit 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 the issue has been determined and may deal with the suit in accordance with the decision on that issue.

Sub-rule (1) of Rule 2 specifically provides that 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. The mandate of Order XIV, Rule 2 is to decide, as far as possible, all the issues and pronounce judgment on all issues. However, it is subject to Sub-rule (2), which gives discretion that if the Court is of the opinion that the case or any part thereof can be disposed of on the issue of law only, it may "try" that issue first, if that issue relates to the jurisdiction of the Court or bar to the suit. As against this, Section 9A specifically gives a mandate that notwithstanding anything contained in the Code or in any other law for time being in force, if the objection to jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court is required to determine the issue as to jurisdiction as a preliminary issue before granting or setting aside the order of interim relief.

10. Section 9A is a departure from the procedure established for deciding the preliminary issue as prescribed under Order XIV, Rule 2 of Civil Procedure Code. On many occasions, it is not always proper to pass an order of hearing the preliminary issue with regard to maintainability of a suit at the time of final

hearing of the suit. If such issue is decided at an earlier stage, rights of the parties can be crystallized. As stated earlier, Section 9A is a departure from the procedure prescribed under Order XIV, Rule 2 of the CPC for achieving that object. For determination of the preliminary issue, which may be mixed question of law and facts, the parties are required to lead evidence. Without permitting the parties to lead evidence the issue of jurisdiction cannot be finally determined. If it was to be decided only for prima facie purpose for granting interim relief, then there was no necessity of adding Section 9A in the Civil Procedure Code. Secondly, on the basis of prima facie determination without proper adjudication, in our view, suit cannot be disposed of. The plaintiff cannot be non-suited on the basis of the averments made in the plaint or in the written statement. If the issue is a pure question of law, then it may be decided without recording evidence, but if it is a mixed question of law and fact, then parties should be permitted to lead evidence on the facts of the case. Question of jurisdiction, even if it is a mixed question of law and fact, it is required to be decided first. For deciding the said issue, the parties are entitled to lead evidence, oral as well as documentary, as that issue is required to be tried and adjudicated finally by the Court. The determination of the said issue is not only for the limited purpose of granting interim relief or vacating interim relief. It is true that this procedure requires piecemeal determination of the suit, but that cannot be avoided because of the mandate of Section 9A.

11. In this view of the matter, the ratio laid down in the case of *Dattatraya Jangam v. Jairam Gore* reported in 1964 Mh.L.J. 750 : 1964 (66) BLR 645, that "the jurisdiction of the Court should ordinarily be determined at the time of institution of a suit when the plaint is filed, that the plea of the defendant will not determine or change the forum" or that "in order to determine which Court has jurisdiction to try a suit, the Court should read the plaint as a whole and ascertain the real nature of the suit and what in substance the plaintiff has asked for" is not required to be applied in a case where issue with regard to jurisdiction is required to be raised and determined. Raising and determination of the issue would certainly require adjudication as per the procedure prescribed in the CPC that is, after giving an opportunity of leading evidence to both parties. In this view of the matter we are not referring to various other judgments, which lay down that to determine the nature of the suit what is to be looked into is the real substance of the suit and not legal ingenuity in drafting the plaint or that the question of jurisdiction for the prima facie purpose is to be decided by examining the substance of the case in the plaint. The said judgments are only for the purpose of determining whether the Court has jurisdiction at the prima facie stage to try the suit. But if the issue of jurisdiction is required to be raised and finally determined, then it would require giving an opportunity of leading evidence and hearing to both the parties.

12. We would, at this stage, refer to the precise principle laid down by this Court in the case of *Smt. Neelabai Mahadeo Salunke and Others Vs. Shamrao Tatoba Pawar and Others*, wherein the Court has, after observing that the averments

made in the plaint would be sufficient to decide the question of jurisdiction, held as under:

In considering the preliminary issue, the Court must look into the averments in the plaint and consider any objections which the defendant may choose to raise against the maintainability of the action on those averments. The question of jurisdiction which is raised by way of a demurrer has always to be decided on the allegations made in the plaint and not on the contentions that the defendant may raise. It is true that if the jurisdiction of the Court depends upon the proof of a fact and the question as to the existence or otherwise of that fact is canvassed, the parties may lead evidence in support of their respective cases before the preliminary issue as to jurisdiction of the Court is decided.

In this view of the matter, we agree with the decision in the case of Kranti Mohan Guruprasad Mebra and Another Vs. Fatehchand Vasuram Behal, and in the case of Dinyar Behramji Irani v. Kshirsagar Construction Co. Pvt. Ltd. Bombay reported in 1993(2) Mh.L.J. 1812 : 1994(3) BCR 264.

13. In the result we hold that if Section 9A 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 9A 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 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 required giving of opportunity to the parties to lead evidence, if required.

10. In the light of the above two Division Bench judgments of this Court, we shall now proceed to discuss the scheme under the Civil Procedure Code. The Courts are vested with wide jurisdiction to try all suits of civil nature except the suits of which their cognizance is either expressly or impliedly barred. State of Maharashtra added Section 9-A to the Code with an intention to permit a party to take objection to the jurisdiction of the Court to entertain a suit and the Court is required to proceed to determine the issue as a preliminary issue even before granting or setting aside the order granting the interim relief prayed for in the suit. Besides this, the Section also requires the Court to dispose of such an application expeditiously and shall not to be adjourned to the hearing of the suit. Section 9-A of the Code opens with the non-obstante clause. It is notwithstanding anything contained in the Code or any other law for the time being in force. Sub-section (2) is an exception in terms of which even where pending determination of a preliminary issue as to jurisdiction, the Court may grant interim relief. The objection, in any case, has to be in regard to the

jurisdiction of the Court to invoke the provisions of Section 9A of the Code. The object of Section 9-A of the Code is, therefore, to avoid hardship and injustice to a party affected by the grant or otherwise of an interim order when the Court has no jurisdiction to entertain and decide the suit.

(emphasis supplied)

11. Under the scheme of Order 14 of the Code, the issues of fact and issues of law are to be framed with reference to the pleadings of the parties. The provisions of the Code cast an obligation on the Court to frame issues as per the provisions of Order 14 Rule 2. Sub-rule (5) of Rule 1 requires that the Court shall frame and record issues on which the decision is to be made. Sub-rule (1) of Rule 2 of Order 14 contemplates that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall pronounce judgment of all issues. However, this provision is subject to the provisions of Sub-rule (2) of Rule 2. The exception being that where the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first and specifically where it relates to jurisdiction of the Court or a bar to the suit created by law for the time being in force. The Court is further vested with the power that if for that purpose, the Court thinks fit, it may postpone the settlement of other issues until after that issue has been determined and then may proceed to frame and decide other issues arising in the suit. Once issues are framed, the Court is required to apply its mind, whether any of the issues framed by it is required to be tried as a preliminary issue as contemplated under Order 14, Rule 2. In the event the answer is in the affirmative, the Court is required to proceed to decide such an issue and if necessary even by recording evidence and record its finding. In the event it is answered in the negative, the Court shall proceed with the suit in accordance with law and pronounce its judgment on all issues framed by it. Under the provisions of Order 14, Rule 5, the Court has been given the power to amend or even frame additional issues at any time which may be necessary for determining the matter in controversy between the parties before passing a decree. The power of the Court extends even for striking out an issue framed.

12. Order 15, Rule 3 mandates that wherever the parties are at issue on some question of law or fact and issue has been framed by the Court and the Court is satisfied that no further argument or evidence, then the parties can adduce evidence is required upon such of the issues as may be sufficient for the decision of the suit and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such an issue and pronounce judgment accordingly.

13. Under Order 41, Rule 25, power is conferred on the Appellate Court to frame additional issues. The legislative intent and purpose behind this is that the party can raise an objection at any stage of the proceedings. The expression "Court" obviously includes Appellate or Revisional Court. Under the provisions of Rules 23 and 25 of Order 41 of the Code, the Appellate Court has the power to frame

additional issues or where it reverses, the finding recorded in a decree on a preliminary issue to remand the matter for determination of all issues in accordance with law. In other words, the Appellate Court has similar powers like the trial Court.

14. The legislative scheme of the Code behind these provisions is that issues of fact and law, for valid reasons, can be raised at any stage in terms of the statutory provision before passing of a decree by a trial Court and even before the Appellate Court. If, in the opinion of the Court, the issue arises and requires determination as a preliminary issue or an issue to be tried with the regular suit, the Court shall order accordingly. All the above provisions of the Code and for that matter even Section 9-A of the Code spells a specific obligation upon the Court to frame issues. It also gives the Court wide discretion to be exercised in consonance with the settled principles to decide, whether an issue ought or ought not to be framed as a preliminary issue and if framed, whether such an issue should or should not be decided at the threshold and/or along with other issues. Section 9-A of the Code, however, makes out a somewhat exception to the procedure stated under Order 14 of the Code in relation to framing of issues and trying to the extent that such an objection could be raised by a defendant at the hearing of an application for setting aside an interim relief relating to stay, injunction, appointment of Receiver or otherwise and raise an objection with regard to jurisdiction of the Court at the very threshold. Such an objection essentially must be raised at the very initial stage and once such an objection is raised, the law requires that the Court shall proceed to determine the issue in regard to jurisdiction as a preliminary issue. But this specific demand of the legislature is also to the exception contained in Section 9-A of the Code. Of course, the Court is expected not to shift the determination of the issue of jurisdiction along with the hearing of the suit. The purpose being that the point of jurisdiction raised at the very initial stage of hearing of injunction application should be decided at the threshold without taking recourse to the regular proceedings in the suit.

15. Both the Division Benches of this Court in the case of Meher Singh (supra) and Madhuri Prabhakar Patole (supra) have enunciated the principles which, with respect, we follow. The adoption of the reasoning given in those two judgments would certainly help us to answer the questions referred more effectively.

16. Under Order XIV, Rule 1 of the Code of Civil Procedure, the term "issue" has been explained and the issue would arise when a material proposition of fact and law is affirmed by one party and denied by the other. Thus, the base of any issue is an affirmation by one and denial by the other. The issues could be of fact and/or of law. However, no provision of the Code either explains or defines the expression "preliminary issue". The Law Lexicon, Second Edition 1997 explains the word "issue" as sending or causing to go forth; the act of passing out, and explains the word "preliminary" as introductory; initiatory; preceding; temporary; provisional; as preliminary examination, injunction, articles of peace,

etc. The Black's Law Dictionary also explains the same meaning of the word "preliminary". The very connotation of the expression "preliminary", therefore, indicates initial or primary stage.

17. The preliminary issue would be one which is framed on the pleadings of the parties and requires to be looked into and to which the Court should apply its mind at the preliminary/initial stage. In contradistinction to fuller it is more important and an essential stage. There has not been much variation in the judicial view prior to the amendment of 1976 in the Code of Civil Procedure. The issues with regard to the jurisdiction were tried as preliminary issues and preferably at the initial stage itself. Prior to the amendments, the Court was to form and express an opinion as to whether the case can be disposed of on the issue of law and the Court first to decide the preliminary issue at that stage and was not to postpone it till the determination of all issues and passing of the judgment delivered by the Court. After 1976, a question of jurisdiction may be a pure question of law, or mixed question of law and fact depending upon the facts of each case. Once the Court forms an opinion that issue of law on which the entire suit could be disposed of and should be treated as preliminary issue, it has a discretion to try that issue or to postpone the final determination of the issue along with other issues.

18. Under the amended provisions, the law requires the Court to form an opinion and exercise its judicial discretion to dispose of the preliminary issues, particularly, in relation to jurisdiction or bar to the suit created by any other law, the Court may dispose of the suit on that issue alone. In *Daljit Singh Vs. Joginder Singh Sekhon*, and *Mary and Another Vs. Mathew Joseph and Others*, , the Court stated that the Code has not defined the term "issue of law". Normally, if answer to an issue is determinable on the basis of some principle of law, that issue is called an issue of law. If the parties want to lead evidence on an issue, it ceases to be an issue of law. Under the old rule all the issues of law were required to be tried as preliminary issues but according to the amended rule only some kinds of issues can be tried as preliminary issues. Thus a discretion has been given to the Court to try or not try an issue as a preliminary issue. Where the Court forms an opinion that the issue raised, that is regarding the jurisdiction of the Court or even bar of law, by which suit is precluded from being entertained, the Court would normally treat it as preliminary issue. Section 9-A only adds the further condition to it that the Court shall decide the issue of jurisdiction at an early stage that is while an application for relief of injunction, Receiver etc. As specified in that provision is pending before the Court. Such an issue is not required to be deferred to the final determination of the suit subject to again opinion and satisfaction of the Court under Sub-section (2) of Section 9-A of the Code.

19. Another aspect which needs to be clarified at this stage itself is that maintainability of a suit is distinct from institution of the suit being barred under any law or when the Court lacks inherent jurisdiction to entertain and decide the

suit. For example, the question of limitation is not bar to the institution of the suit but essentially, is a principle which would frustrate the claim as being barred by time.

20. The Supreme Court in the case of *Ittavira Mathai Vs. Varkey Varkey and Another*, had clearly enunciated the principle that where a decree was passed in a suit which was barred by time, it would not be a nullity, as a Court has jurisdiction to entertain to decide the suit. While the lack of territorial or pecuniary jurisdiction of the Court and bars contemplated under Order VII, Rule 11 read with Order XIV Sub-rule (2) are the cases where the Court would be exercising the powers without jurisdiction or that the very institution of the suit in that Court was prohibited by other law. Normally, the later class of cases would be based on a question of law and even if they are based upon the mixed question of fact and law, the Courts would normally be inclined to decide such a issue as preliminary issue at the initial stage itself. The Division Bench judgment of this Court in *Madhuri Prabhakar Patole 's case* (supra) has clearly stated that there is no inconsistency or repugnancy in the provisions of Section 9-A of the Code with the provisions of Order XIV, Rule 2 of the Code. In fact, Section 9-A supports the basic idea of Order XIV, Rule 2 and provides additional provisions to further cause which does not, in any way, damage or destroy the object of the provisions.

21. Even in the case of *Maharashtra State Warehousing Corporation Ltd. Vs. Bhujang Krishnaji Kohale*, , the Single Judge of this Court had taken the view that under Order XIV, Rule 2 of the Code, the discretionary power vested in the Court to form an opinion as to whether an issue should or should not be treated and tried as preliminary issue despite the fact that it is a mixed question of fact and law.

22. In its recent judgment in *Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others*, , the Supreme Court held that the question of limitation is and can be a mixed question of fact and law and such questions could be decided by the Court at the preliminary stage if the facts of the suit are clear and applying the principle of demurrer, the issue could be decided as a preliminary issue. With reference to the provisions of Order VII, Rule 11, the Court held as under:

13. Sub-rule (2) of Order 14, Rule 2, CPC lays down that where issues both of law and of fact arise in the same suit, and the Court is of the 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. The provisions of this Rule came up for consideration before this Court in *Major S.S. Khanna v. Brig. F.J. Dillon* and it was held as under: (SCR p. 421)

Under Order 14, Rule 2, CPC 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 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. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.

Though there has been a slight amendment in the language of Order 14, Rule 2, CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.

15. The principle underlying Clause (d) of Order 7, Rule 11 is no different. We will refer here to a recent decision of this Court rendered in *Popat and Kotecha Property v. State Bank of India Staff Assn.* Where it was held as under in para 10 of the report: (SCC p. 515)

10. Clause (d) of Order 7, Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7, Rule 11, Civil Procedure Code. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.

19. 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. The question whether the words "barred by law" occurring in Order 7, Rule 11(d), CPC would also include the ground that it is barred by law of limitation has been recently considered by a two-Judge Bench of this Court to which one of us was a member (Ashok Bhan, J.) in *Balasaria Construction (P) Ltd. v. Hanuman Seva Trust* it was held: (SCC p. 661, Para 8)

8. After hearing Counsel for the parties, going through the plaint, application under Order 7, Rule 11(d), CPC and the judgments of the trial Court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time.

This principle would be equally applicable to a company petition. Therefore, unless it becomes apparent from the reading of the company petition that the same is barred by limitation the petition cannot be rejected under Order 7, Rule

11(d), Indian Penal Code.

23. Somewhat similar view was taken by the Supreme Court in the case of Gunwantbhai Mulchand Shah and Others Vs. Anton Elis Farel and Others, , that issue of limitation is a mixed question of law and fact and in the facts of that case, insofar as it relates to the prayer for a perpetual injunction restraining the defendants from interfering with the possession of the plaintiffs cannot be held to be barred by limitation. It may be noticed that a suit for injunction would be governed by Article 113 of the Limitation Act and cause of action, for the said relief arises when the right to sue accrues. It would depend upon facts and circumstances before the Court deciding when the right accrued, on the pleadings and the evidence in the case.

24. Single Judge of this Court in the case of Shraddha Associates and Another Vs. St. Patrick's Town Co-operative Housing Society Ltd. and Others, took the view that issue regarding the fact of bar of limitation can be disposed of as preliminary issue under Order XIV, Rule 2 only in case they can be disposed of as an issue of law and not otherwise.

25. In the case of Dattatraya Krishna v. Jairam Ganesh Gore 1964 Mh.L.J. 750, the Full Bench of this Court prior to insertion of Section 9-A to the Code took the view that jurisdiction of the Court should be determined at the time of institution of the suit when the plaintiff's claim will not alter or change the forum. It is held-

4. Those are the provisions of law which have to be considered in deciding the questions which we have formulated for our consideration. The first question which arises in this connection is whether the jurisdiction of the Special Court depends on the plaintiff's case as made out in the plaint or whether the contentions raised by the defendant are also to be taken into consideration. This question has been finally settled by the Supreme Court in two cases, Raizada Topandas v. Gorakhram (1) and Vasudev v. Board of Liquidators (2). In the former case the Supreme Court approved the view taken by this Court in Govindram Salamatrai v. Dharampal (3) and Jaswantlal v. "Western Comp., India" (4), that the jurisdiction of the Court should ordinarily be determined at the time of the institution of a suit when the plaint is filed, that the plea of the defendant will not determine or change the forum and that in order to decide whether a suit comes within the purview of Section 28 of the Rent Act the exclusive jurisdiction of the Court arises only if the person invoking the jurisdiction of the Court alleges that the other party is a tenant or a landlord and the question is one which is referred to in Section 28, where the person so invoking does not set up the claim that the other party is a tenant or a landlord, the defendant is not entitled to displace the jurisdiction of the ordinary Court by an allegation that he stands in that relation qua the other and on the ground that Court has no jurisdiction to try the suit or proceeding or an application.

26. In another Single Judge judgment of this Court in Fedroline Anthoney Joseph

Vs. Vinod Vishanji Dharod and Hazol Rodriques and Others, , it is stated that Section 9-A of the Code is a departure from the procedure for deciding a preliminary issue under Order 14, Rule 2 because it is prefaced by a non-obstante clause and once prerequisites of Section 9-A are satisfied, the Court is obliged to decide the application at the stage indicated in the provision itself.

27. As spelled out in the judgment of the Full Bench of this Court in Dattatraya Krishna v. Jairam Ganesh Gore 1964 Mh.L.J. 750, jurisdiction of the Court should ordinarily be determined at the time of the institution of suit, the Full Bench has indicted that the issue in regard to the jurisdiction should be raised and decided at the earliest stage. Describing the scope and effect of Section 9-A of the Code of Civil Procedure, the Supreme Court in the case of Tayabbhai M. Bagasarwalla and another Vs. Hind Rubber Industries Pvt. Ltd. etc., , held that objection as to the jurisdiction is to be decided by the Court as a preliminary issue but such a mandate would not prevent the Court from passing interim order while the decision on question of jurisdiction is pending. The Court held as under:

16. According to this section, if an objection is raised to the jurisdiction of the Court at the hearing of an application for grant of, or for 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. An application raising objection to the jurisdiction to the Court is directed to be heard with all expedition. Sub-rule (2), however, says that the command in Sub-rule (1) does not preclude the Court from granting such interim relief as it may consider necessary pending the decision on the question of jurisdiction. In our opinion, the provision merely states the obvious. It makes explicit what is implicit in law. Just because an objection to the jurisdiction is raised, the Court does not become helpless forthwith nor does it become incompetent to grant the interim relief. It can. At the same time, it should also decide the objection to jurisdiction at the earliest possible moment. This is the general principle and this is what Section 9-A reiterates. Take this very case. The plaintiff asked for temporary injunction. An ad interim injunction was granted. Then the defendants came forward objecting to the grant of injunction and also raising an objection to the jurisdiction of the Court. The Court overruled the objection as to jurisdiction and made the interim injunction absolute. The defendants filed an appeal against the decision on the question of jurisdiction. While that appeal was pending, several other interim orders were passed both by the Civil Court as well as by the High Court. Ultimately, no doubt, the High Court has found that the Civil Court had no jurisdiction to entertain the suit but all this took about six years. Can it be said that orders passed by the Civil Court and the High Court during this period of six years were all non est and that it is open to the defendants to flout them merrily, without fear of any consequence. Admittedly, this could not be done until the High Court's decision on the question of jurisdiction. The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force, i.e., for violation and disobedience committed prior to the decision of the High

Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of the Rule of Law and would seriously erode the dignity and the authority of the Courts. We must repeat that this is not even a case where a suit was filed in the wrong Court knowingly or only with a view to snatch an interim order. As pointed out hereinabove, the suit was filed in the Civil Court bona fide. We are of the opinion that in such a case the defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction.

28. The correct principle, therefore, is the one recognized and reiterated in Section 9-A to wit, where an objection to jurisdiction of a Civil Court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the Court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the Court decides that it has no jurisdiction when passed and effective till the Court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the Court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case, the Court should, while holding that it has no jurisdiction to entertain the suit, put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the violation is committed before the decision of the Court on the question of jurisdiction.

28. The view that preliminary objections and at least, which in the opinion of the Court, are issues of law should be decided at the threshold also find support from the observations of the Supreme Court in the case of *Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi*, , where again while making reference to the provision of Order VII, Rule 11, the Court held as under:

10. The question arises as to whether in the background of the facts already stated, such reliefs can be granted to the plaintiff. Unless there is a term to the contrary in the contract of service, a transfer order is a normal incidence of

service. Further, it is to be considered that if the plaintiff does not comply with the transfer order, it may ultimately lead to termination of service. Therefore, a declaration that the transfer order is illegal and void, in fact amounts to imposing the plaintiff on the defendant in spite of the fact that the plaintiff allegedly does not obey order of her superiors in the management of the defendant Company. Such a relief cannot be granted. Next relief sought in the plaint is for a declaration that she continues to be in service of the defendant Company. Such a declaration again amounts to enforcing a contract of personal service which is barred under the law. The third relief sought by the plaintiff is a permanent injunction to restrain the defendant from holding an enquiry against her. If the management feels that the plaintiff is not complying with its directions it has a right to decide to hold an enquiry against her. The management cannot be restrained from exercising its discretion in this behalf. Ultimately, this relief, if granted, would indirectly mean that the Court is assisting the plaintiff in continuing with her employment with the defendant Company, which is nothing but enforcing a contract of personal service. Thus, none of the reliefs sought in the plaint can be granted to the plaintiff under the law. The question then arises as to whether such a suit should be allowed to continue and go for trial. The answer in our view is clear, that is, such a suit should be thrown out at the threshold. Why should a suit which is bound to be dismissed for want of jurisdiction of a Court to grant the reliefs prayed for, be tried at all? Accordingly, we hold that the trial Court was absolutely right in rejecting the plaint and the lower Appellate Court rightly affirmed the decision of the trial Court in this behalf. The High Court was clearly in error in passing the impugned judgment whereby the suit was restored and remanded to the trial Court for being decided on merits. The judgment of the High Court is hereby set aside and the judgments of the Courts below, that is, the trial Court and the lower Appellate Court are restored. The plaint in the suit stands rejected.

29. In the case of *The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another*, , the Supreme Court stated that question in relation to the territorial jurisdiction to try the suit u/s 20 of the Code should be decided earlier and even it was open to the defendant to waive this objection and if they do so, they cannot subsequently take the objection.

30. We have already noticed and, in fact, we have no reasons to differ with the view expressed in *Madhuri Prabhakar 's case* (supra) by the Division Bench of this Court that Order 14, Rule 2 and Section 9-A of the Code were not in conflict with or repugnant to each other. On the contrary, they both fall in the ambit of procedural law and to be adopted by the Courts in consonance with the legislative intent. Similar is the view expressed by the other Division Bench in the case of *Meher Singh* (supra) holding that Section 9-A is added with a specific object that objection in regard to jurisdiction should be taken and decided as a preliminary issue, notwithstanding the provisions of Order 14, Rule 2 of the Code. The view expressed in this judgment is in line with the view taken by a Full Bench of this Court in the case of *Dattatraya Jangam* (supra) where the Court

directed that issue of jurisdiction should be decided at the initial stage itself so as to ensure conclusion of the proceedings rather than their prolongment, in case such issue of jurisdiction is directed to be decided along with the merits of the case at the final stage. Where the issue is of jurisdiction or bar to the institution of the suit, such issues should be decided at the initial stage. Wherever an objection is filed under the provisions of Section 9-A of the Code, the Court is expected to deal with such issue of jurisdiction at the first instance and is not permitted to club it with the decision of the suit on merits. These provisions are to be given harmonious construction to achieve the ends of justice in expeditious disposal of the suit. A legislative intent behind Section 9-A as well as Order 14, Rule 2 is to truncate the prolonged procedure of law wherever the issue of jurisdiction relating to pecuniary or territorial and even a bar to the institution of the suit going to the root of the jurisdiction of the Court is raised. The intention is to save the time of the Court, avoid inconvenience to the parties and to ensure that if the Court has no jurisdiction to try and decide the suit, the parties may receive such an order at the earliest rather than coming to such a conclusion at the end of the suit after the prolonged litigation. To decide an issue at the very threshold, the question of territorial and pecuniary jurisdiction and for that matter lack of jurisdiction resulting from a bar to the very institution of the suit, would normally have to be determined with reference to the plea of demur. The person raising an objection would have to take the averments in the pleadings on its face value or establish by way of proper pleadings or defence that the Court lack jurisdiction. The question relating to jurisdiction would be a question of law or a mixed question of law, and fact, depending on the facts and circumstances of the case. Such an objection can be raised at any stage, subject to the exceptions provided in law. Except where the defendant could waive and actually waives an objection, the same could not be taken at any subsequent stage of the suit. The Court would include Appellate Court as appeal would be continuation of a suit. This point of view can also be supported by the provisions of Order 41, Rule 24 and 25.

31. The language of Order 14, Rule 2 does not mandate any stage at which an application can be filed by the party raising an objection in regard to the jurisdiction of the Court or a bar to the suit created by any law. Objections of this kind could be taken up at any stage but, as already indicated in this judgment, the precedents require that they should be taken at the initial stage of the suit itself. Once such an objection is taken at the initial stage, it enables the Court to form its opinion and exercise its discretion, whether such an issue claimed relates to jurisdiction of the Court or bar to the suit under any law and also whether such an issue should be treated as a preliminary issue. In the event, the opinion of the Court is in the affirmative and its determination would dispose of the suit itself, in that event, the Court should decide such an issue at the very first instance. However, if the objection is taken at a belated stage the Court would have to examine the effect thereof with regard to the facts of each case. Suffice it to note that once an issue is raised the Court is expected to form its

opinion and exercise its discretion as per the scheme of the Code and the precedents enunciating the principles governing exercise of such jurisdiction. Section 9A is a departure from the procedure for deciding a preliminary issue under Order 14, Rule 2.

32. Another judgment of a Division Bench of this Court in the case of Jagdish Hari Thatte and Ors. v. Municipal Corporation of Greater Bombay and Anr. 2007(1) Bom.C.R. 577, was also brought to our notice, where on a reference made, the Court took the following view:

Incidentally, it must be noted that recording of findings on all issues while deciding the matter finally after the time the parties have adduced evidence is not dependent on the nature of the final order that is to be passed, means whether finally the suit is to be dismissed on the ground of jurisdiction or whether plaint is to be returned. Whatever be the order, when the same is to be passed finally after the parties have led evidence on all issues, then it is necessary for the Court to decide other issues on merits even if the Court comes to the conclusion that it lacks jurisdiction.

The Division Bench, while coming to the above conclusions, had referred to the provisions of Section 9-A and Order 14, Rule 2. It is apparent that both the stages contemplated u/s 9-A as well as Order 14, Rule 2(2) are an exception to Order 14, Rule 2(1) which makes it obligatory upon the Court to record finding on all issues. It has already been noticed by us, with reference to the various judgments of this Court as well as the Supreme Court, that Section 9A contemplates a stage of deciding a preliminary issue during the pendency of interlocutory applications, that too, for the limited reliefs indicated in that section. Order 14, Rule 2 vests discretion with the Court to decide the issue of jurisdiction raised at the initial stage at the threshold of the proceedings, if the facts and circumstances of the case so require. Once both these stages are over and parties lead evidence on all issues, then obviously the Court is required to record findings on all the issues including the issue of jurisdiction as contemplated under Order 14, Rule 2(1).

33. Discussing the scheme u/s 9A and Order 14, Rule 2 of the Code of Civil Procedure, a Division Bench of this Court in the case of I.C.I.C.I. Limited Vs. Sri Durga Bansal Fertilizers Ltd. and others, , which, it appears, was not brought to the notice of the learned Single Bench, impressed upon the need of final decision on issue of jurisdiction by affording opportunity to the parties as the primary object behind both these provisions was to avoid multiplicity of litigation. The Court held as under:

The stage at which the objection raised u/s 9-A of the CPC is to be considered stands concluded by a Division Bench judgment of this Court in Meher Singh Vs. Deepak Sawhny and Another, . It has been held that Section 9-A has been added to see that issue of jurisdiction is decided as a preliminary issue notwithstanding anything contained in the Code of Civil Procedure, including Order XIV, Rule 2.

The Court had further held that 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.

...

10. Under these circumstances, we are of the considered view that when question about the territorial jurisdiction is raised either in an application seeking revocation of leave under Clause XII of the Letters Patent or on an application u/s 9-A of the Code of Civil Procedure, the appropriate procedure to follow is to finally decide the said question by giving opportunity to the parties, if facts and circumstances of the case so require, to lead evidence. Such a course would avoid multiplicity of proceedings and would also be in consonance with the provisions of Section 9 and/or Order XIV, Rule 2 of the CPC and Clause XII of the Letters Patent. It would also avoid examination of the same question twice over. It is, however, a different matter if the parties agree that for all purposes, the question of jurisdiction may be decided only *prima facie* and that it should be left to be finally determined at the trial of the suit along with the other issues on merits. As already noticed, in the present case, such a concession was not forthcoming from the defendants.

34. No statute can provide for all situations when legislature enacts a law. It may neither be feasible nor comprehensible to legislate a law which could operate as a straight-jacket formula for all classes, situations and stage of proceedings. It is also neither permissible nor proper for the Court to provide a strait-jacket formula regulating exercise of statutory powers. The provisions of Section 9A of the Code are prefaced with a non-obstate clause. These provisions, as applicable in the State of Maharashtra, are required to be enforced in preference to any other provisions contained in the Code and even any other law for the time being in force. When the provisions of Section 9A can be invoked is reflected in the language of the Section itself. In consonance with the law aforestated in different judgments of this Court, it is essential that an application for injunction or for vacating injunction or grant of such other relief or even an application for setting-aside the orders as spelt out under these provisions, should be pending before the Court. In the proceeding, an objection in regard to the jurisdiction of the Court ought to be taken by the parties who desire to have such issue determined at the initial stage itself. In that event, the Court is expected to deal with the application by framing a preliminary issue of jurisdiction and after granting the parties an opportunity even to lead evidence to decide such an issue at the first instance and not to defer it for determination along with the suit. Thus, it is obvious that once ail application for the relief of injunction, appointment of Court receiver, stay, etc; has been finally decided by the Court in accordance with law, the rigours of Section 9A would lose their significance and statutory application. Thereafter, the test applicable would be that of Order 14, Rule 2 of the Code, where the Court is to form an opinion as to whether along with other issues, the

issue relating to the jurisdiction or bar to the maintainability of the suit under any other law should or should not be treated as preliminary issue. Whether it should be decided preferably at the initial stage or along with all issues relating to the merits of the case, is injudicial discretion of the Court. This judicial discretion of the Court is then in no way controlled by the provisions of Section 9A of the Code as the stage indicated by the legislative mandate u/s 9A is over. Similar power obviously could be exercised by the Appellate Court as well. We have already noticed that the consistent view of this Court has been that there is no conflict between the provisions of Section 9A and Order 14, Rule 2 of the Code. On their correct and harmonious interpretation, the said provisions are intended to achieve the same object i.e. expeditious disposal of the preliminary issue relating to the jurisdiction of the Court.

35. The expression "jurisdiction of the Court", in addition to territorial or pecuniary jurisdiction, will also take in its ambit and scope the cases relating to lack of inherent jurisdiction of the Court. For example, if filing of the suit before the Civil Court is barred by any law for the time being in force and such an objection is taken by the defendant under the provisions of Order 7, Rule 11(d), it will be a question which goes to the very root of Courts jurisdiction to entertain and try the suit and, therefore, it should be decided at the threshold. Such a matter could be determined from the averments made in the plaint and the suit, therefore, would be liable to be dismissed at the very initial stage itself. This, besides being a question of law, goes to the very root of the matter relating to the jurisdiction of the Court. For such a purpose, the Court has to examine the plaint and the documents filed in support of the suit claim. Unlike the provisions of law of procedure, which are normally directory, the provisions of Section 9A are mandatory while the provisions of Order 14, Rule 2 are to be exercised in the judicial discretion of the Court. Thus, Section 9A operates at a particular stage of the proceedings of the suit while the provisions of Order 14, Rule 2 are attracted at any stage of the suit. Such a view would be in fact in conformity with the view taken by the earlier Benches of this Court by applying the principle of harmonious construction to both these provisions.

36. In view of the above discussion, we answer the questions as follows:

(i) An application for framing of issue relating to jurisdiction of the Court can be filed at any stage of the proceedings in the suit. The provisions of Section 9-A of the Code are attracted only when the conditions stated in that provision are satisfied at the time when question of jurisdiction is raised before the Court. Once the stage contemplated u/s 9-A of the Code is over (i.e. the application for interim orders has been decided), then these provisions lose their mandatory character and significance. Whereafter the application for framing an issue relating to jurisdiction and its determination in accordance with law would be controlled by the provisions of Order 14, Rule 2 of the Code.

(ii) However, if an application for grant or vacation of reliefs specified u/s 9-A of the Code has already been decided by the Court of competent jurisdiction, in that

event, the proceedings in the suit would be controlled by the provisions of Order 14, Rule 2 of the Code. The formation of opinion and exercise of discretion by the Court cannot be regulated by any strait-jacket formula and essentially it must be left in the discretion of the Court, depending on the facts and circumstances of a given case. The Court will obviously exercise such jurisdiction applying the well accepted canons of civil jurisprudence. In other words and construed objectively, the provisions of Section 9-A are not mandatory and subject to what has been stated above, it may not be necessary for the Court to decide the issue at the threshold. If the application for interim relief is pending, Section 9-A of the Code will operate with - all its rigour and irrespective of the stage of such application.

We accordingly answer the reference and direct that the matter now be placed before the Court for disposal in accordance with law.