

(2002) 09 BOM CK 0024

In the Bombay High Court

Case No : Civil Revision Application No. 752 of 2002

Shraddha Associates and Another

APPELLANT

Vs

St. Patrick's Town Co-operative Housing Society Ltd. and
Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(1), Order 14 Rule 2(2), Order 14 Rule 3, Order 14 Rule 5

Citation : (2003) 3 BomCR 814 : (2003) 2 CivCC 627 : (2003) 2 MhLj 219

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : R.D. Soni, instructed by Mr. Ram and Co, for the Appellant; Mandira Maitra and Rajesh Ketkar, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties. Perused the records. Rule. By consent, rule is made returnable forthwith.

2. The facts in brief, relevant for decision in the matter, are that the respondent No. 1 has filed a suit for a declaration and injunction being R.C. Suit No. 126 of 1995 against the petitioners and the respondent Nos. 2 to 4 in respect of the property bearing Survey No. 121/1, situated at Hadapsar, Pune. The respondent No. 1 filed an application for interim relief being Exhibit-5 which was rejected by order dated 3-1-1996. Appeal carried against the same also came to be rejected by order dated 22-1-1997. The petitioners thereafter filed a written statement raising various defences, including the point relating to bar of limitation. The issues, including the issue regarding bar of limitation were framed on 1-10-2001. The petitioners thereafter filed an application dated 12-6-2001 u/s 9A of the Code of Civil Procedure, 1908 (for the sake of brevity, hereinafter referred to as "the C.P.C.") requesting that preliminary issue of limitation be framed and decided as such. The same was allowed by the trial Court by its order dated

1-10-2001. The preliminary issue was framed to the effect that: "Whether the suit is filed within limitation?" On the very day, i.e. on 1-10-2001, the respondent No. 1 herein filed an application u/s 9A(2) for grant of injunction pending the disposal of the issue of limitation. However, when the matter came up for hearing before the trial Court on 13-3-2002, the trial Court decided to deal with the said issue of limitation along with the other issues in the suit and not as preliminary issue by the impugned order dated 13-3-2002.

3. The impugned order is sought to be challenged primarily on the ground that the trial Court could not have modified its decision to decide the issue of limitation as a preliminary issue without hearing the petitioners and that therefore the impugned order is not only contrary to the basic principles of natural justice, but in breach of the procedure. Secondly, by placing reliance in the decision of the learned single Judge of this Court in *Sudesh w/o Sushilkumar Handa v. Abdul Ajiz s/o Umarbhai and Anr.*, reported in 2007 (1) Mh.LJ. 324 it is sought to be contended that the issue of limitation touches the jurisdiction of the Court and therefore is necessarily to be dealt with as a preliminary issue.

4. Section 9 of the CPC provides that the Court shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Section 9A of the CPC provides that notwithstanding anything contained in the 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. It further provides that 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. The provisions of law contained in Sub-section (2) of Section 9A empowers the Court to grant any such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction.

5. Order XIV of the CPC deals with the topic of settlement of issues and determination of suit on issues of law or on issues agreed upon. Rule 1 thereof provides that the issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Rule 3 provides that the Court may frame the issues on the basis of the allegations made on oath by the parties, or the allegations made in the pleadings or in answers to interrogatories delivered in the suit, or the contents of documents produced by either party. Rule 5(1) provides that the Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed. Sub-rule

(2) thereof provides that the Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced. The most important provisions of law contained in Order XIV is Rule 2 and it reads thus:

"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."

6. Bearing in mind the above provisions of law, and before considering the rival contentions in the matter, it would be necessary to take note of certain undisputed facts in the matter. The suit in question was filed on 20-1-1995. The suit is for a declaration and injunction. Prayer (a) relates to declaration that the order of amalgamation of the plots bearing Nos. 51 to 54 from the layout of the plaintiff-society, passed on 14-6-1993, to be illegal, null and void. Prayer (b) relates to cancellation of the said order dated 14-6-1993. Prayer (c) relates to declaration that the building plan sanctioned by the defendant No. 1 vide commencement certificate dated 14-7-1993 to be illegal, null and void. Prayer (d) relates to the relief of revocation and cancellation of the building plan sanctioned by the commencement certificate dated 14-7-1993. Prayer (e) relates to injunction to restrain the defendant Nos. 4 and 5 from carrying out any construction in furtherance of the building plan sanctioned by the defendant No. 1 by order dated 14-7-1993. Prayer (f) relates to restraining the defendant Nos. 1 to 3 by way of permanent injunction from passing or giving approval to any further plan. Prayer (g) relates to mandatory injunction for direction to demolish the construction carried out on plot Nos. 51 to 54 in accordance with the plan sanctioned by the defendant Nos. 1 to 3 on 14-7-1993. Para 25 of the plaint relates to pleading regarding the cause of action. It states that the cause of action for filling the suit arose pursuant to the order of amalgamation passed by the defendants on the back of the plaintiff on 14-6-1993 and further the sanction of the building plan by letter dated 12-7-1993 and further when the defendant Nos. 4 and 5 suppressed the material facts and made various misrepresentations before the defendant No. 1 as also when the plaintiff had knowledge in April, 1994 about the sanction of the building plan and also arose when the plaintiff issued several representations through notices dated 15-4-1994, 24-5-1994 and 30-6-1994 and through various letters dated 8-4-1994, 20-4-1994, 22-4-1994,

29-4-1994, 21-5-1994, 15-6-1994, 21-6-1994, 1-9-1994 and 17-12-1994 and also arose on 4-1-1995 when the plaintiff issued notice u/s 164 of the Maharashtra Co-operative Societies Act, 1960 to the Registrar, Co-operative Societies, Pune. Further, the reply of the defendant Nos. 4 and 5 i.e., the petitioners herein to Exhibit-117, which was an application u/s 9A(2), discloses that:

"Without prejudice it is submitted that the plaintiff has not disclosed any prima facie case before this Court for the grant of the relief u/s 9A(2) of the Civil Procedure Code. It is submitted that these defendants long back had created third party interest and details in that behalf were disclosed before the Supreme Court of India and after the decision of the Supreme Court also third party interest has been created. Hence a relief in that behalf is infructuous.

In this matter after framing of the preliminary issue plaintiff itself is not leading evidence on that issue and prolonging the matter. By calling upon the parties to produce irrelevant documents this plaintiff itself is instrumental in delaying the matter."

7. Reverting to the first ground of challenge, it is to be seen that Rule 5 of Order XIV of the CPC amply empowers the Court to amend or strike out issues as and when required during the pendency of the suit. The powers given to the Court in that regard undoubtedly are to be exercised based on the materials available before the Court and which can be utilised for the purpose of framing or re-framing of the issues. It is primarily for the Court to apply its mind to the pleadings and the other materials, as specified in Rule 3 of Order XIV for the purpose of framing of the issues. Undoubtedly, the parties and their Advocates are not forbidden from assisting the Court in matter of framing of the issues. However, no party as a matter of right can insist for being heard in the matter prior to the framing or re-framing of the issues by the Court. Framing of the issues is an obligation of the Court in order to find out the exact nature of the controversy and to narrow down the scope of the dispute between the parties so as to enable both the parties to the proceedings to know the exact nature of the case which they are required to meet in the proceedings. Undoubtedly, in case there is any error on the part of the Court in framing such issues, nothing forbids the parties from bringing such error to the notice of the Court and request for amendment or deletion or framing of additional issues, as the case may require. But that cannot prevent the Court from amending or striking of the issues as and when occasion arises for the same. Being so, merely because the petitioners were not heard at the time of re-framing of the issue in the matter, and deciding the issue of limitation should be tried along with the other issues and the same cannot be a justification for interference by the Court in revisional jurisdiction in the impugned order. Nothing prevents the petitioners from approaching the trial Court even at this stage and to convince the trial Court, if they can, that the issue of limitation in the facts and circumstances of the case requires to be tried as a preliminary issue. The provisions contained in Rule 5 of Order XIV of the

CPC are very wide in that regard and the issues can be modified at any stage of the proceedings.

8. As regards the second ground of challenge in terms of the decision of the learned single Judge in Sudesh's case (supra), the issue of limitation touches the jurisdiction of the Court and that therefore is required to be tried as a preliminary issue, it is to be seen that Section 9A comes into play only in cases where the objection to the jurisdiction is raised at the time of hearing of any interim application and not otherwise. In other words, in a suit while hearing the matter pertaining to the application for temporary injunction or appointment of Receiver or any other interim relief in terms of Order XXXIX of the Civil Procedure Code, and if the issue of jurisdiction of the Court to deal with the matter itself is raised, certainly the Court would be obliged to frame such issue and decide the same as a preliminary issue in terms of the provisions contained in Section 9A of the Civil Procedure Code. The provisions thereunder would have no application once the suit is ordered to proceed on merits. As already seen hereinabove, the application for interim relief in the case in hand was disposed of on 3-1-1996. The appeal against the same was disposed of on 22-1-1997. Being so, there was no occasion for the Court below to deal with the issue of limitation as a preliminary issue in terms of Section 9A in the facts and circumstances of the case. Undoubtedly, that would not prevent the Court from framing any issue of jurisdiction as a preliminary issue if the facts and circumstances in a matter warrants so, by taking resort to the provisions of Order XIV, Rule 2 of the Civil Procedure Code. However, before dealing with this aspect it would be necessary to go through the judgment of the learned single Judge in Sudesh's case, relied upon by the learned Advocate for the petitioners.

9. In Sudesh's case, the learned single Judge of this Court was dealing with a matter where, in a suit filed for specific performance of the contract dated 7-11-1994, the defendant on service of the notice appeared before the Court and moved an application that preliminary issue be framed with regard to the question that the suit is barred by limitation. The trial Court rejected his application concluding that the issue of limitation raised by the defendant is a mixed question of law and fact and cannot be decided as a preliminary issue. The said decision was challenged by way of revision application. While disposing the said revision application, the learned single Judge took note of the arguments on behalf of the petitioner challenging the said order, as under:

"The learned counsel for the applicant has placed emphasis on the expression "excepting suits of which their cognizance is either expressly or impliedly barred" appearing in Section 9 as reproduced above. According to him, this is wide enough to encompass the situation with which we are concerned in this case. It is submitted that question of limitation would definitely be decisive to consider as to whether the Court could take cognizance of the suit. According to the learned counsel, institution of the suit would be expressly barred by virtue of the provisions in the Limitation Act, which issue goes to the jurisdiction of the Court

to try and decide the suit on merits. Moreover, this aspect of the matter can be adjudicated on the basis of the pleadings before the Court; and in the given case, if it is a mixed question of law and fact, by permitting the parties to adduce the evidence in that behalf." After considering the arguments of the parties and resorting to some of the judgments, the learned single Judge held thus;

"As aforesaid, the question whether the suit is barred by limitation, in my view, is a question which would expressly touch upon the issue of jurisdiction of the Court, for, if the suit is barred by limitation, the Court trying such a suit is precluded to pronounce upon the merits of the contentions. With a view to avoid multiplicity of proceedings, as observed by the Division Bench of this Court, it would be, therefore, essential that issue of jurisdiction in the context of suit being barred by limitation is framed and decided in the first instance before proceeding to decide the suit on any other issue....."

10. It is pertinent to note that the suit which was filed and which was the subject-matter before the learned single Judge in Sudesh's case was suit of the year 1999 being Special Civil Suit No. 170 of 1999. It was for the purpose of specific performance of contract dated 7-11-1994. Apparently, the suit was filed beyond the period of three years from the date of execution of the agreement. The facts of the case do not disclose that the pleadings in the plaint having revealed facts disclosing the cause of action having arisen within three years prior to the date of filing of the suit, and the arguments advanced in the said petition were to the effect that "This aspect of the matter can be adjudicated on the basis of the pleadings before the Court." As is revealed from para 7 of the judgment quoted hereinabove as being the arguments on behalf of the parties. Apparently, the point of limitation which was sought to be raised in the case before the learned single Judge in Sudesh 's case was on the basis of the pleadings in the plaint itself and not on the basis of any material which could have been placed in support of the contention about the bar of limitation. The observation of the learned single Judge to the effect that; "the question whether the suit is barred by limitation, in my view, is a question which would expressly touch upon the issue of jurisdiction of the Court" has to be read with the further observation by the learned single Judge that "the Court trying such a suit is precluded to pronounce upon the merits of the contentions." Apparently, bearing in mind that the issue of limitation was raised purely on the basis of the pleadings in the plaint and if on the face of the plaint it would disclose that the suit was barred by limitation, there would have been no occasion for the Court to proceed with the matter to deal or adjudicate the dispute on merits, the learned single Judge has observed that in such cases certainly the issue of limitation would touch upon the issue of jurisdiction of the Court. The observation "touch upon the issue of jurisdiction of the Court" in the said judgment has to be read in the context of the facts of the said case. It is to be noted that Section 3 of the Limitation Act, 1963 casts duty upon the Court itself to verify from the plaint as to whether the suit sought to be initiated is barred by the law of limitation. Certainly, the said point has to be decided with reference to the pleadings in the plaint itself. If the

plaint is found to be barred by the law of limitation, certainly the Court will have to take resort to the provisions of Order VII, Rule 11 (d) of the CPC and act accordingly. In cases where for whatever reason the Court does not take into consideration this aspect on presentation of the plaint, and if this point is sought to be raised by the defendant on his appearance pursuant to the notice of institution of the plaint, certainly, the Court would be empowered to look into that issue. However, such an exercise will be confined to adjudication of the point by referring to the pleadings in the plaint and the plaint alone and not by referring to any other materials.

11. The Apex Court in *Ittavira Mathai Vs. Varkey Varkey and Another*, , dealing with the subject of necessity or otherwise of the framing of issue of limitation as the preliminary issue or to deal with the same as such, has ruled thus:

"Even assuming that the suit was barred by time, it is difficult to appreciate the contention of learned counsel that the decree can be treated as a nullity and ignored in subsequent litigation. If the suit was barred by time and yet, the Court decreed it, the Court would be committing an illegality and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well settled that a Court having jurisdiction over the subject-matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject-matter and it had the jurisdiction over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, Courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullities. Learned counsel, however, referred us to the decision of the Privy Council in AIR 1935 85 (Privy Council) and contended that since the Court is bound under the provisions of Section 3 of the Limitation Act to ascertain for itself whether the suit before it was within time, it would act without jurisdiction if it fails to do so. All that the decision relied upon says is that Section 3 of the Limitation Act is peremptory and that it is the duty of the Court to take notice of this provision and give effect to it even though the point of limitation is not referred to in the pleadings. The Privy Council has not said that where the Court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity."

12. In *Halsbury's Laws of England*, Fourth Edition, Vol. 10, para 715, it is provided thus:

"By "jurisdiction" is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way

for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means.

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

13. The Apex Court in *Smt. Ujjam Bai Vs. State of Uttar Pradesh*, has held that "jurisdiction of a Court means existence of authority to administer justice prescribed with reference to the subject-matter, pecuniary value or local limits." The jurisdiction is thus the power of the Court to adjudicate and decide matters brought before it. Such powers include the authority to hear and decide the controversy between the litigating parties and to give relief.

14. The difference between lack of jurisdiction and irregular exercise of jurisdiction is always to be borne in mind. It is well said that a "Court has jurisdiction to decide wrong as well as right". When the Court has jurisdiction to entertain the matter, it can exercise its jurisdiction properly or improperly as well as regularly or irregularly but the defect in exercise of jurisdiction does not go to the root of the matter and error in exercise of jurisdiction can be remedied. However, if any order is passed without jurisdiction to the Court, then it is a nullity and it cannot be remedied.

15. The rule of limitation is a rule of procedure. When the law of limitation prescribes a period of limitation for institution of a suit of a particular nature, it does not create any right in favour of any person but it merely provides that the remedy which the person is entitled to, consequent to the cause of action having arisen in his favour, is to be exercised within the period prescribed and not beyond such period. Likewise, the rules of limitation do not destroy the rights of the parties but they simply discourage the lethargy and dilatory tactics in seeking the remedy. The law of limitation only bars the remedy and does not destroy the right to which the remedy relates to.

16. It is also to be noted that the right which accrues to the opposite party on account of delay in seeking the remedy can be in certain cases waived by the opposite party or can be condoned by the Court as well as the period of limitation in certain cases gets extended whereas in some cases a part thereof stands excluded. If the action brought beyond the period of limitation in the absence of any objection in that regard by the opposite party as well as in ignorance thereof by the Court and is followed by a decree which remains unchallenged then the same will attain finality and will be enforceable. It will be a case of waiving the right to object on the ground of bar of limitation.

17. It would be appropriate also to refer to the decision of the Division Bench in *Meher Singh Vs. Deepak Sawhny and Another*, which was also referred to by the learned single Judge in *Sudesh's* case. In fact the question for determination

before the Division Bench was while deciding the objection with regard to the jurisdiction 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. Apparently, the issue was not the one which arose for consideration in the present petition, but was limited to whether the parties would be entitled to lead evidence while dealing with the issue of jurisdiction u/s 9A. As already seen above, the issue of jurisdiction u/s 9A can be framed as a preliminary issue only in cases where the same arises while hearing the application for interim relief or for vacating of interim relief. Being so, the decision of the Division Bench can be of no help to consider the point, as to whether the issue of limitation which can be framed as a preliminary issue under Order XIV, Rule 2 thereof can be tried as a preliminary issue or not and as to whether while considering such issue the parties would be entitled to lead evidence or not. In fact the decision of the Division Bench is very clear in that regard. It has been held therein that: "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."

18. Rule 2 of Order XIV of the CPC and more particularly Sub-rule (2) thereof empowers the Court to frame preliminary issues regarding jurisdiction of the Court and the bar to a suit created by any law for the time being in force when such issues can be disposed of as issues of law only. Apparently, in cases where such issues can be disposed of as issues of law only, it would not require any recording of evidence, and based on the pleadings and contentions of the parties, the Court will have to dispose of such issues. But that is not the case when the issue of jurisdiction would be an issue of law as well as of facts. Certainly, in case of facts, the parties will have to place those facts on record and establish the same in order to prove their contention in relation to existence or absence of jurisdiction of the Court to deal with the matter. Nevertheless, in view of the provisions contained in Sub-rule (1) of Rule 2 of Order XIV, a suit in a normal course, has to be disposed of by a judgment on all the issues. When the issue of jurisdiction requires evidence to be recorded, certainly it would be in the interest of justice and to avoid unnecessary duplication of evidence as well as wastage of time of the Court as well as of the parties, to permit the parties to lead evidence on all the issues together, along with the issue regarding jurisdiction. But at the same-time, if the Court is able to ascertain from the parties that the issue of jurisdiction can be decided on the basis of limited evidence which can be lead by the parties and such evidence would not be duplication of the evidence on other issues, then certainly the parties can be allowed to address the Court on the issue of jurisdiction considering it as a preliminary issue and can be tried and disposed of accordingly. It all depends upon the facts of each case and there cannot be any hard and fast rule in that regard. In fact, considering this aspect itself, the Legislature has used the terminology "if it thinks fit" in Sub-rule (2)

while giving ample discretion to the Court to decide as to whether the point of jurisdiction and bar to the suit to be tried as preliminary issues or not, while postponing the settlement of other issues albeit, the discretion has to be exercised judiciously.

19. Reverting to the facts of the case, as already seen above, the objection which is sought to be raised regarding the bar of limitation, is not based on the pleadings in the plaint but on the ground of creation of third party interest in the suit properties and it is the case of the plaintiff that it requires to lead evidence in support of its contention that the suit is within limitation. The fact that the point of limitation cannot be decided on the basis of the pleadings is apparent on the face of the plaint itself inasmuch as that, as already pointed above, the reliefs sought in the plaint are in the nature of declaration and the injunction is sought for as consequential relief, consequent to the orders passed on 14-6-1993 and 14-7-1993 and the suit was filed on 28-1-1995 i.e., within the period of limitation of three years from the date of the orders which are sought to be challenged being null and void. The cause of action is stated to have arisen on 14-6-1993 and thereafter. Being so, the same is also within the period of three years prior to the date of the institution of the suit.

20. Contention was also raised that the objection to limitation is based on Section 487 of the Bombay Provincial Municipal Corporations Act, 1949. Section 487(1) provides that no suit shall be instituted against the Corporation or against the Commissioner, or the Transport Manager, or against any municipal officer or servant, in respect of any act done or purported to be done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act; (a) until the expiration of one month next after notice in writing has been, in the case of the Corporation, left at the chief municipal office and, in the case of the Commissioner or of the Transport Manager or of a municipal officer or servant delivered to him or left at his office or place of abode, stating with reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his attorney, Advocate, Pleader or agent, if any for the purpose of such suit, nor (b) unless it is commenced within six months next after the accrual of the cause of action. Stress is laid on Clause (b) which provides that the suit has to be filed within six months next after the accrual of the cause of action. The contention is that since the cause of action is stated to have arisen in June and July, 1993 and the suit having been filed in January 1995, it is said to be beyond the period of six months next after the accrual of cause of action. However, while advancing this argument, the provisions of Sub-section (1) of Section 487 are totally ignored. Sub-section (1) of Section 487 provides that the limitation of six months in Clause (b) would apply in cases where "any act done or purported to be done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act." Apparently, the suits required to be filed within six months next after the accrual of the cause of action are in relation to the acts done or purported to have been done in exercise of the

powers under the said Act or acts which are otherwise required to be done under the said Act having been neglected to be performed by such authorities. It does not refer to the acts which have been done de hors the provisions of the Act or in contravention of the Act. Any act performed by a statutory body de hors the powers under the Act or in contravention of the provisions of the Act cannot be said to be an act done or purported to be done in pursuance or execution or intended execution of the said Act and therefore merely by referring to the pleadings in the written statement such an issue cannot be decided. It will require recording of evidence to ascertain the exact nature of the act performed by the parties and whether such acts can be said to be acts done or purported to be done in pursuance or execution or intended execution of the said Act and for the same reason the parties would be entitled to lead evidence in the matter. Being so, the parties will have to establish certain facts in that regard before the Court could arrive at any conclusive finding on such aspect and hence such an issue cannot be considered as an issue purely of law but it will be an issue of law and facts which will require recording of evidence and considering the same, such an issue cannot be said to be in each and every case a preliminary issue.

21. The fall out of the above discussion is that:

(i) the obligation cast upon the Civil Court to frame the issue of jurisdiction as a preliminary issue u/s 9A is only in cases where such an issue is raised while dealing with the application for grant of or vacating any interim relief, including the appointment of Commissioner, matters pertaining to stay and similar such interim applications and not otherwise;

(ii) the jurisdiction of the Court to re-frame or re-cast issues in exercise of the powers under Rule 5 of Order XIV of the CPC is not subject to pre-hearing of the parties and consequent to such re-framing or re-casting or striking of the issues in exercise of those powers, the parties are not precluded from approaching the Court for further exercise of powers under the said Rule, either for re-framing of the issues or for recalling of the order passed earlier by the Court under the said Rule;

(iii) the issue regarding bar of limitation can be disposed of as a preliminary issue under Order XIV, Rule 2(2) of the CPC only in cases where it can be disposed of as an issue of law and not otherwise. In cases where such an issue requires recording of evidence, it has to be disposed of along with the other issues except when the Court, in its opinion, thinks fit to postpone the settlement of the other issues till the disposal of the issue regarding jurisdiction or limitation. Undoubtedly, the Court in that regard has to exercise its discretion judiciously and considering the facts of each case.

(iv) The decision in Sudesh case was in the facts of that particular case wherein the point of limitation was raised on the basis of the pleadings in the plaint itself and being so, the ruling therein cannot be made applicable to the cases where the point of limitation is to be decided by allowing the parties to lead evidence on

such issue.

22. In the result, therefore, the civil revision application fails and is rejected. The rule is discharged with no order as to costs.