

CASE NO.:
Appeal (civil) 415 of 2008

PETITIONER:
Rhodia Ltd. & Ors

RESPONDENT:
Neon Laboratories Ltd

DATE OF JUDGMENT: 15/01/2008

BENCH:
ASHOK BHAN & AFTAB ALAM

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NO.415 OF 2008
[Arising out of S.L.P.(C)No.14033 of 2007]

Leave granted.

In a suit for specific performance of an agreement entered into between the appellants and the respondent filed by the respondent, the Trial Court framed a preliminary issue under Section 9A of the Code of Civil Procedure (CPC) which is to the following effect :

"Whether this Court is having jurisdiction to entertain the suit."

The said issue was answered in favour of the respondent. Aggrieved thereby, the appellants filed Civil Revision Application before the High Court of Bombay. The High Court, by its order dated 15th July 2002, set aside the order of the Trial Court and remanded the matter for consideration afresh. The said order of the High Court was challenged by the respondent in this Court. This Court, by an order dated 18th November 2004 set aside the said order of the High Court and requested the High Court to dispose of the Civil Revision Application at an early date after considering the relevant law including

the judgments, viz., Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd. (2003) 4 SCC 341 and Modi Roland Druckmachin AG v. Multicolour Offset Ltd. & Anr. (2004) 7 SCC 447 and remitted the matter back to the High Court for fresh decision in accordance with law.

By the impugned order dated 13th April 2007, the learned Single Judge, relying on his own earlier decision in the case of Solapur Social Urban Co-operative Bank Ltd. v. Nigam A. Mannan Beskar & Ors. 2006(4) Bom.C.R. 217, held that Section 9A of the CPC stands repealed by reason of the Code of Civil Procedure (Amendment) Act 1999 and Code of Civil Procedure (Amendment) Act 2002 passed by the Parliament.

While deciding the Civil Revision Application, the learned Single Judge appears to have lost sight of the fact that the aforementioned decision of the learned Single Judge had been referred to a larger Bench of the High Court and has decided the application without taking note thereof. Aggrieved by the said decision, the appellants have filed this appeal.

We had issued a limited notice as to why the impugned order be not set aside and the matter be listed after the decision of the larger Bench of the Bombay High Court.

We are now informed that the Division Bench of the High Court, by its order dated 29th November 2007, has taken the view that Section 9A remains on the Statute in the State of Maharashtra.

In view of the decision of the Division Bench of the High Court, the impugned order is set aside and the case is remanded back to the High Court for a fresh decision on merits. Since this matter is pending for the last eight years at the initial stage, we would request

the
Hon'ble Chief Justice of the High Court of Bombay to post the matter for hearing and disposal at an early date preferably within a period of six months. Respondent would be at liberty to file an application for disposal of the hazardous chemical lying with it.

Pending disposal of the Revision Application in the High Court, the proceedings in the
he
suit shall remain stayed.

The appeal is allowed accordingly.

JUDIS