

FARAD CONTINUATION SHEET NO.**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**WRIT PETITION NO. 7550 OF 2011

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	<p style="text-align: right;">CORAM : S.V. GANGAPURWALA, J. DATE :30/09/2011</p> <p>PER COURT :</p> <p>1. The present petitioner is the original defendant. The respondent has filed a Suit before the Civil Judge (Sr.Division), Aurangabad for recovery against the present petitioner. The present petitioner filed an application U/s 9-A read with Section 20 of the Code of Civil Procedure [For short, ' Code '] for framing the issue of jurisdiction as a preliminary issue. The said application is rejected. Aggrieved thereby, the present Writ Petition is filed.</p> <p>2. Mr.PP. Chavan, the learned counsel for the petitioner submits that ex-facie the Court at Aurangabad does not have jurisdiction to entertain the Suit and the Court can consider the same in view of Section 9-A read with Section 20 of the Code. The learned counsel relies on the Judgment</p>

of the learned Single Judge of this Court in the case of *Pankaj Suryakant Lohar V/s Mayuri Pankaj Lohar* reported in 2002 (4) Mh.L.J. - 828.

3. The learned counsel further contends that the Court could not have postponed the decision on the said issue only on the premise that there is no application filed seeking any interim relief.

4. Section 9-A of the Code would not be applicable in the present case. Section 9-A of the Code would be applicable if the plaintiff in the Suit has filed an application claiming some interim relief and the said application for interim relief such as injunction, appointment of receiver, etc. is to be decided and the issue of jurisdiction is raised by the defendant, even the issue of jurisdiction and the application for interim relief are to be decided together. In the present case, no such contingency has arisen as there is no application for any interim relief. In view of that, the application U/s 9-A of the Code is not tenable.

5. The defendant has not even filed his Written Statement. If the defendant files his Written Statement, the defendant is at liberty to invoke the provisions of Order XIV of the Code and is at liberty to file application for framing the issue of jurisdiction as a preliminary issue, which the trial Court would consider on its own merits.

6. The Writ Petition is accordingly dismissed. No costs.

[S.V. GANGAPURWALA, J.]

KNP/WP 7550.2011

