

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2233 OF 2012

IN

WRIT PETITION NO.9205 OF 2010

ALONG WITH

CIVIL APPLICATION NO.2235 OF 2012

IN

WRIT PETITION NO.9204 OF 2010

WITH

WRIT PETITION NO.9206 OF 2010

Chandrashekhar Sadashiv Karkhanis ... Applicant/  
Petitioner

Vs.

Shri Sourabh Nandkumar Bhele and another ... Respondents

Mr. A. V. Chatuphale for the Petitioner/Applicant.

Ms Lalita Panchakshari for the Respondent No.1.

**CORAM : R. G. KETKAR, J.**

**DATE : 28<sup>TH</sup> FEBRUARY, 2013**

**P.C.:**

Not on Board. Mentioned as companion Writ Petition being Writ Petition No.9207 of 2010 was listed today in the main Board. Hence, these matters are taken up on Board.

CIVIL APPLICATION NO.2233 OF 2012 and

CIVIL APPLICATION NO.2235 OF 2012

Heard Mr. Chatuphale, learned Counsel for applicants and Ms Panchakshari, learned Counsel for the respondent No.1.

2. For the reasons stated in the applications, Civil Applications are allowed. Writ Petitions are restored to the file.

WRIT PETITION NO.9205 OF 2010 with  
WRIT PETITION NO.9204 OF 2010 with  
WRIT PETITION NO.9206 OF 2010

Heard Mr. Chatuphale, learned Counsel for the petitioner and Ms Panchakshari, learned Counsel for the respondent No.1 at length.

2. By these Petitions under Article 227 of the Constitution of India, the petitioner has challenged the order dated 07.11.2009 passed by learned 3<sup>rd</sup> Joint Civil Judge, Senior Division, Pune below Exhibit 24 in Special Civil Suit No. 370 of 2008. By that order, the learned trial Judge answered preliminary issue against the petitioner. Since the common questions of law and facts are raised in these petitions, the same can be conveniently disposed of by the common order. In order to appreciate the controversy arising between the parties, the facts from writ petition No.9205 of 2010 are taken into consideration.

3. In view of the order passed below Exhibit 21, the learned trial Judge framed following issue as preliminary issue :

“1. Whether this Court has no jurisdiction to entertain, try and decide the suit ?”

4. By the impugned order, the learned trial Judge rejected the said application. While rejecting the application, in paragraph 10, the learned trial Judge observed that application taken out by petitioner herein for determining preliminary issue is premature. In view thereof, Mr. Chatuphale seeks permission to withdraw these petitions with liberty to file fresh applications raising issue of Civil Court's jurisdiction to entertain and try the suit at the appropriate stage.

5. In view thereof, the Petitions are allowed to be withdrawn with liberty as prayed for.

6. It is made clear that if the petitioner takes out fresh application questioning the jurisdiction of the Civil Court to entertain and try the suit, such application shall be decided on its own merits and in accordance with law and uninfluenced by the observations made in the impugned order.

7. Order accordingly.

8. All the contentions of the parties in that regard are expressly kept open.

**(R. G. KETKAR, J.)**

*Minal Parab*