

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT NO. 1181 OF 2008**

**RASHESH B. SHAH AND ANOTHER )...PLAINTIFFS**

**V/s.**

**THE ROYAL PALMS (I) PVT. LTD. AND OTHERS )...DEFENDANTS**

**WITH  
SUIT NO. 1186 OF 2007  
WITH  
SUIT NO. 1194 OF 2007  
WITH  
SUIT NO. 1268 OF 2007  
WITH  
SUIT NO. 1258 OF 2007  
WITH  
SUIT NO.1259 OF 2007  
WITH  
SUIT NO. 1267 OF 2007  
WITH  
SUIT NO. 1737 OF 2008  
WITH  
SUIT NO. 1269 OF 2007  
WITH  
SUIT NO. 1688 OF 2007  
WITH  
SUIT NO. 1637 OF 2007  
WITH  
SUIT NO. 1638 OF 2007  
WITH  
SUIT NO. 1740 OF 2007  
WITH  
SUIT NO. 1724 OF 2007  
WITH  
SUIT NO. 1180 OF 2008  
WITH  
SUIT NO. 1741 OF 2007  
WITH**

**SUIT NO.1208 OF 2008  
WITH  
SUIT NO. 1182 OF 2008  
WITH  
SUIT NO.1689 OF 2007  
WITH  
SUIT NO. 1725 OF 2007**

Mr.Tahir Pande, through Video Conferencing i/by Juris Consillis,  
Advocate for the Plaintiffs.

Mr.Sharad Bansal a/w. Ms.Namrata Vashisht and Mr.Forum Mehta i/by  
Markand Gandhi & Co. Advocate for the Defendants no.1, 2 and 4.

**CORAM : ABHAY AHUJA, J.**

**DATE : 7<sup>th</sup> APRIL 2026**

**PC. :**

1. When the matters are called out, both the learned Counsel appearing in the matter submit that through inadvertence it was not pointed out to this Court when the order directing further recording of cross-examination was passed, that the recording of cross-examination is for deciding the preliminary issue under Section 9A of the Code of Civil Procedure, 1908 (“CPC”) which has already been omitted by Maharashtra Act, 2018 on 27<sup>th</sup> June 2018. The learned Counsel submit that the Commissioner has also, in view of the decision of the Hon'ble Supreme Court in the cases of *Nusli Neville Wadia vs. Ivory Properties and Others*<sup>1</sup> and *Palli Kishore Marvani and Others vs. Damodar Bhavan*

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1 (2020) 6 SCC 557

*Co.op. Housing Society Ltd. and Others*<sup>2</sup> requested the Court for a clarification. The learned Counsel appearing for the Defendants tenders across the bar a copy of the Preliminary Report of the Commissioner dated 24<sup>th</sup> March 2026 which is taken on record.

2. Since it has been held in the case of *Nusli Neville Wadia vs. Ivory Properties and Others (supra)* that the issue of limitation is a mixed question of law and fact and not a pure question of law, in view of the said decision, the same cannot be decided as a preliminary issue and would be decided at the final hearing.

3. Accordingly, list on **15<sup>th</sup> April 2026** under the caption “for framing of issues”.

4. Let draft issues be exchanged in advance.

5. In view of the aforesaid, the Commissioner appointed by this Court stands discharged.

6. Let his costs, charges and expenses be paid by the parties.

**(ABHAY AHUJA, J.)**

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<sup>2</sup> 2025 SCC Online Bom 544