

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1628 OF 2008

Nusli Neville Wadia ...Plaintiff

V/s.

Ferani Hotels Pvt. Ltd. And 48 Ors. ...Defendants

.....
Mr. Rohan Kelkar, i/b. DSK Legal, for the Plaintiff.

Mr. Sarosh Bharucha, Counsel, a/w. Ms. Alya Khan and Ms. Aditi Bhansali,
i/b. Bharucha & Partners, for Defendant No.1.

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CORAM : S.C. GUPTE, J.

15 JANUARY, 2016

P.C. :

. There is a preliminary issue framed in the suit concerning the plea of limitation. A Division Bench of this Court has rejected the Plaintiff's challenge to the framing of this preliminary issue. That matter was carried in an SLP before the Supreme Court. Though the SLP was dismissed, a Review Petition from the dismissal order is still pending before the Supreme Court. Apparently, the question, whether or not an issue of limitation can be framed as a preliminary issue of jurisdiction under Section 9A of the Code of Civil Procedure, is pending before a larger bench of the Supreme Court. In the Plaintiff's own Review Petition, there is a direction to defer the hearing of the Review Petition till after disposal of the challenge before the larger bench. In the premises, the Plaintiff seeks an adjournment sine die. It is not permissible to grant a sine die adjournment on this footing. It would be another matter if the Plaintiff's Review Petition was placed for

hearing and about to be heard any time soon. That is not the position here. In the premises, it would be necessary for the Plaintiff to obtain a stay order from the Supreme Court where its Review Petition is said to be pending. Anyway, the suit cannot be taken up today in view of the pending Chamber Summons taken out by the third party Applicant for impleadment. In the premises, the suit is stood over to enable the Plaintiff to obtain a stay order, if he so desires. It is made clear that if there is no stay, the suit will have to proceed and, in that case, the Plaintiff would be required to file his affidavit of evidence in lieu of examination-in-chief on the preliminary issue framed by this Court. Stand over to 18 February 2016.

(S.C.GUPTE, J.)