

ITEM NO.9 Court 6 (Video Conferencing) SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).1580/2021

(Arising out of impugned final judgment and order dated 11-12-2019 in SA No. 111/2004 passed by the High Court of Judicature at Bombay At Nagpur)

SAU RAJANI

Petitioner(s)

VERSUS

SAU SMITA & ANR.

Respondent(s)

(WITH I.R. and IA No.10984/2021-EXEMPTION FROM FILING O.T.)

Date : 10-02-2021 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Somiran Sharma, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

- 1 Mr Somiran Sharma, learned counsel appearing on behalf of the petitioner, submits that (i) besides the plea of unauthorized construction, the case in the plaint is that a nuisance has been caused by the by the respondent - defendants; (ii) jurisdiction to decide the issue of nuisance would not lie with the prescribed authority under Section 66 of the Maharashtra Housing and Area Development Act 1976; (iii) the bar of jurisdiction will not be attracted under Section 71; (iv) the judgment of the Delhi High Court in **Arvind Singhal v Max Therapiya Limited**¹ which in turn refers to the judgments of the Division Benches of the Bombay High Court and Madras High Court supports the submission; and (v) the bar contained in Section 71 and Section 177 applies to a proceeding in the nature of eviction and hence is not attracted.

- 2 Issue notice, returnable in twelve weeks. Counter affidavit be filed within six weeks of service. List for final disposal thereafter.
- 3 Dasti, in addition, is permitted.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER