

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 14 OF 2026

WITH
INTERIM APPLICATION NO.10764 OF 2024

Mr. Abhijeet B. Chavan
Age : 1 years, Occupation :
Agriculture/Business
R/o. A/P Village Kasbe Digraj,
Taluka Miraj, District : Sangli
Versus

...Applicant

Mr. Pradeep Nee
Sachin Tukaram Kadam
Age 38, Occupation : Driver,
R/o. R/o. A/P Village Kasbe Digraj,
Taluka Miraj, District : Sangli

...Respondent

Mr. Suryajeet P. Chavan, Advocate for the Applicant.
Mr. Chetan G. Patil, Advocate for respondent.

Coram : MEHROZ K. PATHAN, J.

Date : July 02, 2026.

JUDGMENT :

1. The applicant has approached this Court challenging the order dated 2nd January 2024, whereby the learned Trial Court rejected the application filed by the applicant under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint.

2. Mr. Satyajeet Chavan, learned counsel for the applicant, submits that the suit for malicious prosecution is not maintainable since the

proceedings under Section 138 of the Negotiable Instruments Act were instituted by the present applicant on account of the dishonour of a cheque admittedly issued by the respondent–plaintiff. He submits that merely because the respondent–plaintiff came to be acquitted in the said proceedings, the same, by itself, would not furnish a cause of action for instituting a suit for malicious prosecution.

3. Mr. Chavan, learned counsel for the applicant, relies upon the judgment of the Delhi High Court in **Nau Nihal Singh Rana v. Sunil Kumar**, reported in **2013 Supreme (Del) 927**, wherein the Court allowed the application under Order VII Rule 11 of the Code of Civil Procedure and rejected the plaint on the ground that the statements made in an earlier civil suit could not constitute the basis for filing a suit for defamation. He submits that the statements made in the previous proceedings do not, by themselves, give rise to any cause of action for filing a suit for damages or compensation. He, therefore, submits that merely because the applicant instituted proceedings under Section 138 of the Negotiable Instruments Act on the dishonour of a cheque admittedly issued by the respondent–plaintiff, the same, by itself, would not furnish a cause of action for filing the present suit.

4. Mr. Chavan, learned counsel for the respondent, further places reliance upon the judgment in **ICICI Bank Ltd. v. Kusum Aggarwal**

reported in **2022 Supreme (P&H) 36** wherein it is observed that merely the dismissal of the complaint under Section 138 of the NI Act this will not attract Section 499 or 500 of the IPC against the applications for loss of reputation due to criminal proceedings initiated by the applicants. It is further submitted that the learned Trial Court has committed an error in rejecting the application under Order VII Rule 11 of the Code of Civil Procedure. The impugned order reflects non-application of mind and is, therefore, liable to be quashed and set aside.

5. Per contra, Mr. Chetan Patil, learned counsel for the respondent–plaintiff, vehemently opposes the application and submits that the application under Order VII Rule 11 of the Code of Civil Procedure was not maintainable and has been rightly rejected by the learned Trial Court. He further submits that a perusal of the application filed under Order VII Rule 11(a) and (d) would show that the objection raised therein was essentially confined to the issue of limitation.

6. Mr. Patil, learned counsel for the respondent, further submits that the issue of maintainability based upon the judgment relied upon by the applicant was never raised either in the application under Order VII Rule 11 of the Code of Civil Procedure or during the course of arguments before the learned Trial Court. The impugned order itself reflects that no such contention was raised before the learned Trial Court.

7. Mr. Patil, learned counsel for the respondent, further submits that the learned Trial Court has rightly observed that, while deciding an application under Order VII Rule 11 of the Code of Civil Procedure, only the averments made in the plaint are required to be considered. The defence of the defendant cannot be minutely scrutinised or taken into consideration while deciding an application under Order VII Rule 11 of the Code of Civil Procedure. He further submits that the learned Trial Court has also observed that the allegations made by the plaintiff regarding defamation in society will have to be decided on their own merits after the parties lead evidence and, therefore, the suit cannot be scuttled by allowing the application under Order VII Rule 11 of the Code of Civil Procedure.

8. Mr. Patil, learned counsel for the respondent, further invites the attention of this Court to Article 74 of the Limitation Act, 1963, which reads thus:

Description of suit	Period of limitation	Time from which period begins to run
74. For compensation for a malicious prosecution	One year	When the plaintiff is acquitted or the prosecution is otherwise terminated.

9. Learned counsel for the respondent submits that Article 74 of the Limitation Act, 1963 itself contemplates a suit for compensation for malicious prosecution and prescribes a period of limitation of one year

from the date of acquittal or termination of the prosecution. He, therefore, submits that the very existence of the said provision recognizes the maintainability of such a suit.

10. I have gone through the impugned order dated 2nd January 2024 passed by the learned Trial Court whereby the application filed by the applicant under Order VII Rule 11 of the Code of Civil Procedure came to be rejected. I have also gone through the judgments relied upon by Mr. Chavan, learned counsel for the applicant, in **Nau Nihal Singh Rana v. Sunil Kumar (supra)** and **ICICI Bank Ltd. v. Kusum Aggarwal (supra)**.

11. A perusal of the impugned order shows that the learned Trial Court has specifically considered the objections raised by the applicant on two grounds, namely, limitation and maintainability of the suit on the basis of the acquittal of the plaintiff in the proceedings under Section 138 of the Negotiable Instruments Act. The learned Trial Court appears to have applied its mind to the fact that, apart from the acquittal of the plaintiff in the proceedings under Section 138 of the Negotiable Instruments Act instituted at the behest of the present applicant, there are specific pleadings in the plaint regarding the plaintiff having suffered loss of reputation in society on account of the said prosecution. The said allegations whether the prosecution was malicious or not will have to be established by leading evidence before the learned Trial Court. .

12. The learned Trial Court has, therefore, rightly distinguished the judgment relied upon by the applicant. The said judgment does not relate to a case of malicious prosecution instituted by one party against the other. The judgment relied upon by the applicant pertains to a case where the defendant sought rejection of the plaint on the ground that the plaint did not disclose any cause of action and was filed solely on the basis of the statements made during the earlier proceedings. The another judgment *ICICI Bank Ltd Vs. Kusum Aggarwal (cited supra)* relied upon by the applicant pertains to a case where respondent availed a loan facility from the bank and after the dismissal of the complaint under Section 138 of the NI Act, filed a complaint under Section 499/500 of the IPC against the Bank or its employee. Apart from that in paragraph 14, the Court observed as under :

“14. Mens-Rea, a mandatory prerequisite for the offence of defamation is clearly missing in the complaint filed by the respondent under Section 499/500 IPC. Moreover, the Bank or its employees cannot be in any case held to have committed an offence under Section 500 IPC because, the most essential ingredient of the said offence i.e. ‘mensrea’ would be missing as a Bank or its employees.”

13. That is not the case in the facts of the present suit. The present suit has been filed on the ground that the plaintiff had to undergo a prolonged trial in the proceedings under Section 138 of the Negotiable Instruments Act, which ultimately resulted in his acquittal. Apart from that, there are specific pleadings in the plaint regarding the damage

allegedly caused to the reputation of the plaintiff in society on account of the prosecution initiated by the present applicant. The learned Trial Court has also found that the suit has been instituted within the period of limitation, namely, within one year from the date of acquittal, i.e. 1st August 2017, passed in Criminal Case No. 477 of 2014.

14. In order to succeed in a suit for damages for malicious prosecution, plaintiff has to prove :-

- a) *that the plaintiff was prosecuted by the defendant;*
- b) *that the prosecution ended in favour of plaintiff;*
- c) *that the defendant acted without reasonable and probable cause;*
- d) *that the defendant was actuated by malice."*

15. Thus, in my opinion, a civil suit for malicious prosecution seeking damages against the complainant, following an acquittal under Section 138 of the Negotiable Instruments Act on account of the mental agony suffered and the legal expenses incurred, would be maintainable. However, an acquittal under Section 138 of the Negotiable Instruments Act, by itself, would not automatically establish malicious prosecution. The plaintiff will have to establish before the Civil Court that the proceedings were initiated maliciously and without any reasonable or probable cause and with a malicious intent. The Civil Court will have to independently evaluate whether the defendant had, in fact, nourished malice against the plaintiff while initiating the proceedings. Moreover,

Article 74 of the Limitation Act, 1963 itself provides for filing a suit seeking compensation for malicious prosecution. Thus, the same would indicate that the suit filed by the plaintiff in the present case cannot be said to be bad in law.

16. I do not think that the learned Trial Court has committed any error or illegality in rejecting both on maintainability as well as on limitations the application under Order VII Rule 11 of the Code of Civil Procedure. The present Civil Revision Application is devoid of merits and is accordingly rejected.

17. In view of the disposal of the Civil Revision Application, the interim relief, if any, also stands disposed of.

[MEHROZ K. PATHAN, J.]