

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6129 OF 2016

Mr. Balreet Pruthi

... Petitioner

vs.

Miss. Ninochka Pruthi through mother
Mrs. Davinder Kaur Masani

... Respondent

Mr. Vishwajeet Kotibhaskar a/w Ms. Trupti Mahimkar, Advocate for the petitioner.

Mrs. Taubon F. Irani, Advocate for the respondent.

Coram : Smt. R. P. SondurBaldota, J.

Date : 1st August, 2016.

P.C. :

1 This petition challenges the order dated 20th February, 2016 passed by Family court on the application at Exh.15 filed by the petitioner seeking dismissal of Petition No. C-108 of 2015 filed by his daughter for maintenance. The petitioner sought dismissal of the petition on the ground that the same is barred by res judicata. According to the petitioner, the issue was that could arise for consideration of the Court in the present proceeding have already been considered and decided in the two earlier petitions in view of the consent terms agreed between him and his wife in Petition No. F-53 of 2011 and in the execution application filed by the wife being Regular Darkhast Application No. 406 of 2015, seeking

the expenses of the daughter's education.

2 For the proceedings to be barred by res judicata, the first condition is that the issue must have been decided in the proceedings between the same parties. The respondent's daughter was neither a party to the matrimonial petition of her parents nor the application filed by the wife for execution. Secondly there is no decision on merit. The execution application had ended with the petitioner paying the educational expenses incurred by the wife. The Family Court has dismissed the application of the petitioner by stating several other reasons also. Since the very basic conditions of Section 11 CPC are not satisfied, there can be no infirmity in the order of dismissal of the application. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]