

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.98/2016

Rajmohammad Bhurabhai Manjare
..Versus..
Jangli Madar Railiwale and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 11.1.2016

Heard Shri J.B. Gandhi, advocate for the petitioner.

The original defendant no.4 filed an application (Exh. No.25) under Order 7 Rule 11 of the Code of Civil Procedure praying that the plaint be rejected as it is barred by *res judicata* and as the plaintiffs had earlier filed Regular Civil Suit No.68/2011 against the same defendant which was withdrawn without there being proper application as required by Order 23 Rule 1 of the Code of Civil Procedure and without liberty granted by the trial Court to file fresh suit.

After hearing the learned advocate for the petitioner and examining the documents placed on the record, I find that the order passed by the trial Court rejecting the application under Order 7 Rule

11 of the Code of Civil Procedure cannot be faulted with. I do not find any patent irregularity or illegality which necessitates the interference by this Court in extra-ordinary writ jurisdiction. The writ petition is dismissed. No costs.

At this stage, Shri Gandhi prays that he may be permitted to file an application before the trial Court praying for framing the preliminary issue and deciding it as preliminary issue. I have not examined the legality of this submission and it will be open for the trial Court to consider the application filed by the defendant no.4 regarding framing of preliminary issue and deciding it as preliminary issue, according to law.

JUDGE

Tambaskar.