

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (CAC) NO.44 OF 2016

IN

CIVIL REVISION APPLICATION (STAMP) NO.15790 OF 2016

(Ajaykumar Kamalakant Pathak ..vs.. Ramchandra Madari Katkamwar)

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

Court's or Judge's orders

Shri N.B. Kalwaghe, Advocate for the applicant,
Shri D.V. Chauhan, Advocate for the non-applicant.

CORAM : Z.A. HAQ, J.

DATED : 19-10-2016

Though the application is opposed by the non-applicant, considering the reasons given in the application, delay of 201 days in filing the civil revision application is condoned.

The civil application is allowed.

Civil Revision Application No.71/2016.

Taken up for hearing on admission.

The learned Advocate for the applicant/original defendant has pointed out the copy of plaint in Regular Civil Suit No.869/2011 (earlier suit) and the copy of plaint in Special Civil Suit No.2/2015 (present suit) in which the substantive prayer seeking decree for declaration that the agreement between the plaintiff and defendant stands cancelled, is same. It is submitted that

in the earlier suit, the plaintiff had prayed for decree for injunction restraining the defendant from creating third party interest in the suit property and in the present civil suit, the plaintiff has prayed for decree for possession. It is submitted that as per fourth explanation to Section 11 of the Code of Civil Procedure, the claim made by the plaintiff in the present suit is hit by constructive *res-judicata* and the civil suit is also barred by Order II Rule 2 of the Code of Civil Procedure. The learned Advocate has relied on the judgment given by the Hon'ble Supreme Court in the case of *State of Haryana vs. State of Punjab and another* reported in (2004) 12 SCC 673, to substantiate his arguments.

The points raised by the applicant/defendant require consideration.

Rule.

The proceedings of Special Civil Suit No.2/2015 pending before the trial Court are stayed, until further orders.

Shri D.V. Chauhan, Advocate waives notice for the non-applicant.

At this stage, the Advocates for the respective parties request that the matter be referred for mediation

to Shri Apurv De, Advocate.

Shri Apurv De, Advocate is requested to undertake the mediation and submit report till 06-01-2017.

The parties shall appear before the learned Mediator at the High Court Mediation Center, Nagpur on 21-11-2016 at 1.45 p.m.

JUDGE

adgokar