

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 410 OF 2016

Kiran Vasudeo Dandekar ..Applicant
vs.
Sunita Nandakumar Mahatre & Ors. ..Respondents

Mr. K. D. Patil for Applicant.
Mr. Niketan Nakhawa for Respondents.

CORAM : M. S. SONAK, J.
DATE: 08 SEPTEMBER 2017

P.C :

- 1] Not on board. In view of urgency, taken on board.
- 2] Heard Mr. Patil for the applicant and Mr. Nakhawa for respondent Nos. 2 and 3.
- 3] The challenge in this civil revision application is to the order dated 18th January 2016, by which the learned trial Judge has dismissed the applicant's (defendant's) application at Exhibit 36 seeking for the dismissal of the suit for eviction on the ground that it is barred by the principle of *res judicata*.
- 4] Mr. Patil, learned counsel for the applicant submits that earlier, the landlord had instituted the suit on basis of the same cause of action, which suit has been dismissed and even the appeal against the same stands dismissed. He therefore submits

that this subsequent suit is barred by principles of *res judicata* and the same should be dismissed on this ground at this stage itself.

5] Mr. Nakhawa, learned counsel for the respondents submits that the present suit is based upon the different cause of action. He submits that in any case, the issue of *res judicata* has already been framed by the learned trial Judge and therefore, there is no warrant for the applicant to insist that the suit is required to be dismissed at that stage itself.

6] I perused the impugned order as also the other material on record. The issue of *res judicata* in a situation of this nature involves determination of mixed questions of law and fact. The issue has already been framed by the trial Court based upon the pleadings of the parties. Such issue is required to be decided along with all other issues in the suit once, the parties lead evidence in support of their respective positions. Thus construed, there is no jurisdictional error or perversity in the making of the impugned order. There is no case made out to interfere with the impugned order under Article 227 of the Constitution of India. This civil revision application is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)