

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION ST.NO.41985 OF 2017
WITH
CIVIL APPLICATION NO.945 OF 2018

The State of Maharashtra & others

Applicants

Versus

Sayed Rasool s/o Syed Baban & others

Respondents

Mr.A.D.Namde, A.G.P. for applicants

Mr.D.R.Bhadekar, advocate for Respondents No.3/1, 5/1, 5/2/2,
5/2/3, 6, 7/2 and 8.

CORAM : M.S.SONAK, J.

DATE : 31st January, 2018.

P.C. :

1 Heard learned A.G.P. for the applicants and Mr.Bhadekar, learned Counsel for Respondents No.3/1, 5/1, 5/2/2, 5/2/3, 6, 7/2 and 8.

2 The challenge in this Revision Application is to the order dated 14.08.2017, by which the learned Trial Judge has dismissed the applicants' application under Order VII Rule 11(d) of the Code of Civil Procedure, urging rejection of the plaint on the ground that the same is barred by the principle of *res judicata*.

3 The application was moved at the stage when the evidence in the suit was substantially advanced. Though, this is not a bar to the consideration of application under Order VII Rule 11 of the Code of Civil Procedure, as held by the Hon'ble Supreme

Court in the case of **Saleem Bhai Vs. State of Maharashtra**, (2003) 1 SCC 357, it is pertinent to note that the same decision also holds that for exercise of powers under Order VII Rule 11 of the Code of Civil Procedure, reference can be made only to the statements in the plaint and not to the defence. The issue, as to whether the suit is barred by *res judicata* or not, in the present case, cannot be decided by reference to the averments in the plaint. This is a specific defence raised by the applicants and, therefore, an issue will have to be framed and such issue will have to be tried together with all other issues, in the suit.

4 It is pertinent to note that some other defendants in the suit had made a similar application which was also rejected by the learned trial Court. As against the order of rejection, Writ Petition No.673/2015 was instituted which was dismissed by this Court on 12.12.2017 observing that plaint cannot be rejected but issue of *res judicata* can be framed and tried in the suit.

5 For the aforesaid reasons, Civil Revision Application is dismissed. There shall be no order as to costs.

Pending Civil Applications do not survive and stand disposed of.

M.S.SONAK
JUDGE