

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

CIVIL REVISION APPLICATION NO. 75 OF 2018

Damu Mohan Bahiram	...	Applicant
V/s.		
Ziprabai Tryambak Thakare	...	Respondent

- Mr.Yogesh Katira i/b. Mr.S.P. Shinde for the Applicant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th FEBRUARY, 2018.

P.C. :

- 1] Heard learned counsel for the Applicant.
- 2] This Civil Revision Application is preferred under Section 115 of the Civil Procedure Code (*for short, "C.P.C."*) challenging the order passed below Exhibit-47 in Regular Civil Suit No.57 of 2012 by the Civil Judge Junior Division, Kalyan, on 30th November, 2017.
- 3] The application at Exhibit-47 was filed by the present Applicant under Section 11 of C.P.C.. The Applicant is the Defendant before the trial Court. It was contended that the Respondent herein had filed the suit bearing Regular Civil Suit No.70 of 2012. The said suit was decided on 27th July, 2015. Thereafter, the present suit is filed

and as it is between the same parties, it should be held that it is barred by the principle of *res-judicata*.

4] However, as rightly held by the trial Court, as the judgment and decree passed in Regular Civil Suit No.70 of 2012 is under challenge before the Appellate Court, in Regular Civil Appeal No.285 of 2015, the issue raised in the said suit is not yet heard and finally decided, in view thereof, the bar of *res-judicata* will not be applicable.

5] The trial Court has, therefore, rightly rejected the Applicant's application.

6] In view of the above, no interference is warranted in the Civil Revision Application, hence, it stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]