

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.572 OF 2018

Asha Dilip Wadekar ...Applicant
vs.
Ramdas Dattu Rakshe and Ors. ...Respondents

Mr. N.P. Mule, for the Applicant
Mr. Lalasaheb Bandal I/b. Mr. V.B. Tapkir, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : MARCH 27, 2019

P.C.:

. Heard Mr. Mule, learned counsel for the Applicant and Mr. Bandal, learned counsel for the Respondents.

2. The challenge in this Application is to the order dated 6th August, 2018 by which the learned trial Judge has dismissed the Applicant's application made under Section 11 of the Code of Civil Procedure urging that the present suit is barred by the principles of *Res Judicata*.

3. According to me, the issue of *Res Judicata* will have to be framed as an issue in the suit. Such issue will have to be decided along with all other issues which have arisen in the suit after evidence lead by the parties. There are decisions of the Supreme Court as to the manner in which the issue of *Res Judicata* will

have to be proved. For this purpose, there is necessity of producing the certified copies of the Complaint in the suit. The issue of *Res Judicata* can not be gone into on the basis of application like one which the present Applicant has made in this matter.

4. Accordingly, there is no case made out to interfere in the impugned order. However, the learned trial Judge is directed to frame the issue of *Res Judicata* and thereafter decide the same in accordance with law and on its own merits without being influenced by any observations made in the order dated 6th August, 2018.

5. With direction as aforesaid, this Civil Revision Application is disposed of.

6. There shall be no order as to costs.

7. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)