

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6121/2019

Rajendra M. Chandak

..VS..

Balkrushna T. Pimpalshende & ors.

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

Court's or Judge's orders

Shri A.A. Dhawas, Advocate for the petitioner

CORAM : Z.A.HAQ, J.

DATED : 04/09/2019

Heard.

In the civil suit filed by the respondent nos. 1 to 6 – plaintiffs, seeking decree for eviction and possession, the petitioner – original defendant no. 2 had filed the application (Exh. 14) praying that the suit filed against him be dismissed. The defendant no. 2 contends that earlier also the plaintiffs had filed S.C.S. No. 51/2001 which was dismissed by the trial Court by the judgment dated 29/01/2011, that the defendant no. 2 was party in that civil suit and the findings in the judgment given in that civil suit operate as *res-judicata*. It is contended that the judgment and decree passed in S.C.S. No. 51/2001 was challenged in R.C.A. No. 65/2011 which was dismissed by the judgment dated 28/01/2013.

The application (Exh. 14) does not show the provision under which the defendant no. 2 is seeking dismissal of the civil suit against him, peremptorily. The learned trial Judge has rightly observed that the issue raised

by the defendant no. 2 will have to be adjudicated after the parties are granted opportunity to adduce evidence. I find that the impugned order is in consonance with the legal position and it cannot be said that the learned trial Judge has committed any patent illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. No costs.

JUDGE

Ansari