

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

WRT PETITION NO. 1725/2021

Vijay Sewadas Hedau ..Versus.. Mohd. Anis Jamal Vali Mohd and ors

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

Court's or Judge's orders

Mr. H.I.Kothari, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 09/12/2021

Heard Mr. Kothari, learned counsel for the petitioner, who challenges the impugned order below Exh.12 dated 18.2.2019, whereby the application under Order 7 Rule 11 (a) & (d) of CPC for rejection of plaint has been rejected. learned counsel for the petitioner submits that the matter in issue was already decided in an earlier instituted suit and therefore, the application ought to have been allowed.

It is a settled position of law that while considering an application under Order 7 Rule 11 what is relevant and material are only averments in the plaint and any defence taken or plea raised in the written statement cannot be looked into. The plea of *res judicata* has been raised by the defendant in the written statement on the basis of which the application has been filed, considering which I do not find any infirmity in the impugned order.

The petition, therefore, being without any merits, the same is dismissed.

JUDGE

rvjalit