

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

CIVIL REVISION APPLICATION NO. 54/2021

**Mayabai Vitthalrao Balpande and ors..Versus... Ashok Sunderlal Daga 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. P.V.Vaidya, Advocate for applicants

CORAM : AVINASH G. GHAROTE, J.
DATE : 06/12/2021

Heard Mr. Vaidya, learned counsel for the petitioner. Placing reliance upon **Rushab Ship International LLC vrs. The Bunkers Onboard**, decided on 09.06.2014, it is submitted that the plaint is required to be rejected under Order 7 Rule 11 of CPC if the reasons therefor are found existing from a reading of the plaint itself. It is therefore contended that since the plaint in the instant matter indicates the arising of a cause of action as a dismissal of RCS No. 489/2001, which was dismissed in default on 21.6.2008, and since this RCS No. 489/2001 has been restored by this Court, by order dated 19.12.2019 passed in W.P. Nos. 4858/19 and 3758/18, the cause of action did not survive and therefore, the application u Order 7 Rule 11(a) of CPC could not have been rejected.

There cannot be any dispute with the proposition as laid down in **Rushab Ship International LLC** (supra). It is however material to note that the averment

in SCS No. 601/2010 relating to arising of the cause of action, is not based singularly on the dismissal of R.C.S.No. 489/2001, but on a further cause also, which would be apparent from the language used in para 17, which is quoted as under;

“17. That, the cause of action for this arose at Nagpur, in the set of facts and circumstances on 21/6/2008 when R.C.S.No. 489/01 was dismissed in default. The cause of action is a continuous one in as much as, the plaintiff being the owner of the property and the defendants being nobody vis-a-vis the same, have no right, title or interest of any kind to remain over the property in question viz., Plot No.1 described in para 1 of the plaint.”

It is thus apparent that the cause of action, is claimed to be continuous one on the ground that the plaintiff being the owner and the defendant not being concerned with the same, do not have any right, title or interest of any kind to remain over the property in question.

It is then contended that the later part of para 17 does not contain a date on which the said cause of action arose. It is trite that pleading as to cause of action and the date on which the cause of action arose, are two different things altogether. In the instant case, there is a separate pleading as to there being a continuous cause of action. Any absence of a date, will have to be determined on the basis of evidence led in the suit, considering which I

do not see any infirmity in the impugned order. The petition therefore is without any merits and is accordingly dismissed.

JUDGE

rvjalit