

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12203 OF 2021

NARENDRA SURESH GUNDIYAL
VERSUS
RADHAKISAN MULCHAND GINDODIYA AND OTHERS

Mr.Amol S.Gandhi, Advocate for the petitioner.
Mr.Shrikant S.Patil, Advocate for respondent No.1.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 11, 2022

PER COURT :

1. Heard the learned Advocate Mr.Gandhi for the petitioner and learned Advocate Mr.Patil for respondent No.1. The petitioner is aggrieved by the rejection of an application filed below Exh.87 by invoking the provisions of Order VII Rule 11 of CPC. In the wake of the earlier proceedings, being pending in the High Court in WP No.5741/2011, it is pleaded that the present suit is hit by res-judicata and the Court having no jurisdiction to determine the suit, the plaint was sought to be rejected by invoking Order VII Rule 11.

2. The perusal of the proceedings between the parties, would reveal

that the plaintiff had earlier filed a suit for recovery of rent and possession vide RCS No.418/1992 which was decided on 25/04/1995 and the first appeal was came to be decided on 05/03/2021 and the second appeal is pending for adjudication before this Court. The petitioner pleaded that the second suit i.e, RCS No.138/2015 which seek a relief of possession of the suit premises, is therefore not tenable.

3. Considering the said application, the learned Judge has recorded that the suit in question is pending for evidence of the plaintiff and the earlier litigation between the parties is pending before the High Court in second appeal. On the basis of the pleadings of the parties, where these facts are specifically pleaded, and since the issue of res-judicata is already framed and would be tried in the proceedings, the application, which was preferred for rejection of the plaint on the ground that the suit is hit by res-judicata, is rejected.

4. It is pertinent to note that since the suit RCS No.138/2015 being filed in the year 2015, is submitted by the learned Advocate for the respondents that the plaintiff has examined himself and his six witnesses, whereas the defendant has also filed his evidence affidavit

and is due to be cross examined. In these circumstances, no fruitful purpose would be served by granting the prayer of the petitioner at this stage, which in other event also is not maintainable and has been rightly rejected by the learned Judge.

5. In the wake of the above, by issuing directions to the learned Civil Judge, J.D. to conclude the proceedings in RCS No.138/2015 within a period of six months from today, the writ petition is dismissed.

(BHARATI H. DANGRE, J.)