

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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CIVIL REVISION APPLICATION 229 OF 2022

Tushar Jivanlal Samdadiya

.. Applicant

Versus

Sanjay Vittal Zoting & Ors.

.. Respondents

Mr. Rahul D. Motkar for the applicant.

**CORAM : ROHIT B. DEO, J.
DATE : 9th JUNE 2022**

P.C.:-

. The petitioner is the original defendant, who preferred an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("Code") seeking rejection of plaint on the premise that the suit instituted by the plaintiffs is hit by the principles of *res judicata*. The issue is not *res integra*. Suffice it to refer to the decision of **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors.** The well entrenched position of law is that since issue of *res judicata* cannot be decided without scrutinizing the pleadings in the earlier suit, pleadings in the concerned suit and issues framed, such consideration is beyond the scope of Order VII Rule 11 of the Code which must be restricted to the averments in the suit plaint and the documents which are deemed to be part of the plaint.

2. The other submission of the learned counsel is that the suit is barred by limitation. Apart from the fact that more often not, the issue of limitation is blended question of fact of law, in the application preferred under Order VII Rule 11 of the Code, there is no pleadings, much less ground touching the aspect of limitation.

3. Civil Revision Application is dismissed.

ROHIT B. DEO, J.