

VRJ

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

CIVIL REVISION APPLICATION NO.216 OF 2023

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Date: 2023.10.07
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Anil Appasaheb Kagale

... Applicant

V/s.

Malubai Appasaheb Kagale

... Respondent

Mr. N. J. Patil i/by Mr. Akshay N. Patil for the applicant.

Mr. Nitin B. Patil with Ms. Aditi Rajeshirke for the respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 6, 2023

P.C.:

1. By this application under section 115 of the Civil Procedure Code, 1908, the applicant is challenging order dated 20th October 2022 passed by the Trial Court rejecting application under Order 7 Rule 11 of the Civil Procedure Code, 1908.

2. The respondent filed a suit for maintenance against the applicant. In the said suit, the applicant filed an application under Order 7 Rule 11 of the Civil Procedure Code, 1908, alleging that the respondent has source of income and, therefore, she has no cause of action to file suit for maintenance.

3. On perusal of the plaint and document annexed along with the plaint, it appears that the respondent initially filed a suit for maintenance which was decreed. Second appeal against the said

decree is pending in this Court. Earlier suit was filed in the year 2002.

4. According to the respondent, due to lapse of time, right of claiming fresh maintenance accrued in her favour. In such a suit, whether she is entitled to maintenance based on the fact that she has income from the property needs to be decided by the Trial Court at the time of hearing of the suit. Such issue is beyond the scope of application under Order 7 Rule 11 of the Civil Procedure Code, 1908. Hence, I find no error in the exercise of jurisdiction by the Trial Court rejecting application under order 7 Rule 11 of the Civil Procedure Code, 1908.

5. The civil revision application is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)