

SA Pathan

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

CIVIL REVISION APPLICATION NO.330 OF 2016

Vaijanta Shamrao Kamble & Ors ... Applicants

V/s.

Vivekananda Co-operative Housing
Society Limited Kupwad Through
Murgyappa Tamanna Bhirdi ... Respondent

Mr. N. J. Patil i/by Mr. Amey N. Patil, for Applicants.

Mr. Kuldeep U. Nikam, for respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 25, 2023

P.C.:

1. The defendants filed present civil revision application challenging order passed by the Trial Court rejecting application under Order 7, Rule 11 of the Code of Civil Procedure, 1908.
2. The respondent is original plaintiff who filed Regular Civil Suit No.60 of 2003 for removal of construction in relation to property described in paragraph 1(a) of the plaint.
3. According to the plaintiff, he had filed Regular Civil Suit bearing No.405 of 1986 which was dismissed for non prosecution on 20 September 1995. The plaintiff had filed application for restoration of the suit. However, during pendency of such

application, the defendant in the month of January 2001 has encroached over the property of the plaintiff.

4. It is, therefore, pleaded that bar under Order 22, Rule 9 of the Code of Civil Procedure, 1908 is not attracted.

5. On perusal of the plaint, it appears that the plaintiff has restricted its suit to the new construction carried out in the year 2001. Therefore, inquiry which the Trial Court is called upon is restricted only to the new construction carried out in the year 2001, if this be so, the cause of action for filling the suit has accrued after dismissal of earlier suit. Hence, bar under Order 22, Rule 9 of CPC is not attracted. Hence, I do not find any error of jurisdiction committed by the Trial Court. However, it is clarified that the scope of new suit shall be restricted to the new construction carried out by the defendant in January 2001, if the defendant is able to show that the construction which is subject matter of the suit was subject matter of earlier suit, the Trial Court shall pass appropriate order to that effect. The Trial Court shall decide the suit on its own merits.

6. With this clarification, the civil revision application is dismissed. No costs.

(AMIT BORKAR, J.)