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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7588 OF 2022

Roha Municipal Council and Ors.

.. Petitioners

Versus

Mansi Mandar Date and Ors.

.. Respondents

-
- Mr. Sagar G. Talekar, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 21, 2023.

P.C.:

- 1.** Heard Mr. Talekar, learned Advocate for the Petitioners.
- 2.** Perused the impugned order passed below Exhibit-62 in Civil Suit No.106 of 2016 dated 17.11.2021 by the learned Trial Court. Petitioners are Defendant Nos.2 to 4 before the learned Trial Court. The Suit has been filed for declaration and injunction by the Plaintiffs.
- 3.** By the impugned Application filed below Exhibit-62, Defendant Nos.2 to 4 sought rejection of the plaint under the provisions of Order VII Rule 11(d) of the Civil Procedure Code, 1908 (for short "**CPC**"). The learned Trial Court considered the Application and in fact returned the findings. The issue which was raised by the Petitioners was already concluded by the learned Trial Court while deciding the Application filed below Exhibit-25 and Exhibit-35 by the learned Trial Court.

4. Record indicates that Application below Exhibit-35 was filed under Section 9A of the CPC by the Petitioners themselves. The learned Trial Court referred to a substantive order dated 12.04.2018 while deciding the Applications filed below Exhibit-25 and Exhibit-35 wherein the substantive challenge to the filing of the Civil Suit under Order VII Rule 11(d) of the CPC was not only considered and determined, but was also comprehensively dismissed with reasons. Record of the case further indicates that the order dated 12.04.2018 was challenged before this Court in Civil Revision Application (St.) No.13403 of 2018 and this Court upheld the same by its order dated 06.08.2018.

5. In that view of the matter, the learned Trial Court while considering the Application filed below Exhibit-62 could not have arrived at any different finding as the said Application was based upon the same cause of action that was pleaded in the Application filed by the other Defendants in the Application below Exhibit-25 and was decided by order dated 12.04.2018.

6. Record clearly reveals that the Petitioners' Application filed below Exhibit-35 was dismissed by the learned Trial Court vide order dated 12.04.2018 which was a common order passed below Exhibit-25 and Exhibit-35 respectively.

7. That apart, the learned Trial Court has perused the Application filed by the Petitioners and on perusing the same returned the finding that the prayers are inconsistent and ambiguous and in view of the cause of action espoused by the Petitioners having already been decided with a reasoned order, the same deserved to be rejected.

8. Record shows that the order dated 06.08.2018 passed by this Court in Civil Revision Application (St.) No.13403 of 2018 was not placed before the learned Trial Court at the time of passing of the impugned order.

9. In view of the above, the order passed below Exhibit-62 cannot be faulted with and the same is in consonance with the reasoned order dated 12.04.2018 which was upheld by this Court. Hence, the order dated 17.11.2021 is sustained.

10. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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