



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO. 7044 OF 2024

Shridhar Machindra MaharnorPetitioner

VERSUS

Machindra Maroti Maharnor & othersRespondents

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Mr. S. S. Bora, Advocate for the Petitioner

CORAM : R. M. JOSHI, J.

DATE : 9th JULY, 2024.

PER COURT :

1. Heard.

2. Learned counsel for Petitioner/Plaintiff in Regular Civil Suit No. 282/2017 has taken exception to the order of dismissal of suit as barred by principle of res judicata while deciding obtained raised under Order 7 Rule 11 of Code of Civil Procedure. It is contended that though application Exhibit 30 was filed to that effect, order came to be passed below Exhibit 1. He relied upon judgment of Hon'ble Supreme Court in case of Keshav Sood vs. Kirti Pradeep Sood and others, **MANU/SC/1188/2023**, wherein it is held that the issue of res judicata cannot be decided on the application under Order 7

Rule 11 of Code of Civil Procedure. It is observed therein that adjudication on the point involves consideration of pleadings in the earlier suit, judgment of the Trial Court and judgment of the Appellate Court. It is clear that the said stage is yet to arrive in order to decide the issue regarding dismissal of the suit on the ground of res judicata. In view of this, arguable case is made out by Petitioner. Hence, there would be stay to the impugned order till next date of hearing.

3. Issue notice to the Respondents, returnable on 26.08.2024.

(R. M. JOSHI)
Judge

dyb