

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO.68 OF 2024****Yogiraj Baburao Kamtane****....Applicant****V/s.****Sou. Aruna Ashoklal Patwa and Ors.****....Respondents**

Mr. Priyal Sarda for the Applicant.

CORAM : SANDEEP V. MARNE, J.**Dated : 9 July 2024****P.C. :-**

1) The challenge in the present Civil Revision Application is to the order dated 21 November 2023 passed by the Jt. Civil Judge, Senior Division, Barshi, rejecting the application filed by the Applicant at Exhibit-157 seeking dismissal of the Suit on the ground that the previous Suit bearing Regular Civil Suit No.468 of 1998 was filed by the Plaintiff seeking recovery of possession of ground floor premises and that the same is decided in favour of the Applicant. The Applicant's objection to the present Suit is about maintainability on the ground that since Regular Civil Suit No.468 of 1998 in respect of ground floor premises is dismissed, old Regular Civil Suit No.701 of 1996 (Regular Civil Suit No.334 of 2012) is not maintainable and ought to have been dismissed.

MEGHA
SHREEDHAR
PARAB

Digitally signed by
MEGHA
SHREEDHAR PARAB
Date: 2024.07.11
17:38:11 +0530

2) The application filed by the Applicant at Exhibit 157 is not under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (**the Code**). The Suit is pending since the year 1996 and the Applicant came with a novel idea of seeking its dismissal by filing application at Exhibit-157 on 3 October 2023. The application is thus, filed after 27 long years from the date of filing of the Suit. There is no provision under the Code by which Suit can be dismissed on the ground of *res judicata* merely on the basis of an application filed by the Defendant. Application is not for rejection of the plaint under Order VII Rule 11 of the Code. The application is rightly rejected by the Trial Court by imposing costs of Rs.5,000/-. In fact, this Court was inclined to enhance the costs imposed by the Trial Court considering the frivolousness in which the application was filed. However, since Mr. Sarda has fairly not pressed the Revision Application beyond a point, costs while dismissing the Revision Application are made easy. Costs imposed by the Trial Court are however, not disturbed.

3) Revision Application is accordingly dismissed.

[SANDEEP V. MARNE, J.]