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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 361 OF 2025**

Shri Mahendra Jyotiram Bhosale ... Applicant

Vs.

Sou. Jyoti Pravin Bhosale and Another ... Respondents

Mr. Kiran Kumar Phakade for the Applicant.

Mr. Vaibhav R. Gaikwad for the Respondents.

CORAM : GAURI GODSE, J.

DATE : 18th JULY 2025

ORDER :

1. This civil revision application is filed by the defendant to challenge the order rejecting the application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 ("CPC").

2. Learned counsel for the applicant submits that the present suit is a second suit filed without seeking leave under Order II Rule 2 of the CPC. He therefore submits that the plaint deserves to be rejected at the threshold as barred under Order II Rule 2. He submits that the trial court has not considered the grounds raised regarding filing of the subsequent suit without seeking leave under Order II Rule 2 of the CPC.

3. I have perused the papers of the Civil Revision Application. The plaintiff has filed the present suit seeking a declaration that the conditional mortgage deed is illegal. The initial suit was filed by the plaintiff seeking specific performance. The filing of the earlier suit is pleaded in the present suit. The cause of action pleaded for filing the present suit is in paragraph 15 of the plaint. The cause of action for the present suit is different than in the earlier suit. In the present suit cause of action is pleaded on the ground of execution of the mortgage document.

4. Considering the different cause of action pleaded in the present suit, the trial court has examined the objections raised on behalf of the defendants. The trial court held that in view of the cause of action pleaded regarding execution of the mortgage deed, the present suit filed on a different cause of action cannot be rejected at the threshold. In view of the rival pleadings with regard to the bar under Order II Rule 2 the objection cannot be decided at the stage of Order VII Rule 11 of the CPC.

5. Considering the pleadings, the view taken by the trial court would not require any interference by this court. The

civil revision application is therefore dismissed. It is clarified that the observations and findings recorded in the impugned order are restricted to the extent of deciding the application under Order VII Rule 11 of the CPC.

6. It would always be open for the defendant to raise objections at the time of settlement of issue and in the trial. The rival contentions of the parties on merits of the suit are kept open.

[GAURI GODSE, J.]