

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1370 OF 2024

Ravi Gruh Nirman Pvt. Ltd.

..Petitioner

Versus

Smita Ravindra Salvi & Ors

...Respondents

Mr. A.N. Narula a/w. Ms. Meena Bhatla i/b. Jhangiani Narula &
Associates, for the Petitioner.
Mr. Kalpesh Joshi a/w. Ms. Nisha Shah, Mr. Amar Parab i/b.
Kalpesh Joshi Associates, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED : 9 JANUARY 2025

P.C.:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 11th October, 2023 passed by the learned Judge, City Civil Court in Notice of Motion No. 4080 of 2022 whereby the Motion taken out by the defendants for the rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (the Code) came to be rejected.
3. The learned Judge, City Civil Court was of the view that the plaint can not be rejected for being barred by the provisions contained in Rule 11 of the Code as the issue as to whether the suit was barred by the principle of Res Judicata was required to be investigated and adjudicated.

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4. Mr. Narula, learned counsel for the petitioner, submits that the petitioner is not aggrieved by the said determination. However, while negating the prayer for rejection of the plaint on the ground of bar of Res Judicata, learned Judge, City Civil Court has, in fact, proceeded to decide the issue of Res Judicata and negated the said defence of Res Judicata. The learned Judge, City Civil Court could not have decided the said issue at that stage. It was further submitted that the defendants have in fact taken the requisite contentions in the written statement to make out the defence of Res Judicata. However, the defence that the suit is barred by the principle of Res Judicata has not been formally pleaded in specific words. Therefore, the defendants be permitted to amend the written statement

5. As the defendants claim to have raised the defence of Res Judicata, consistent with the view recorded by the learned Judge, City Civil Court, the said issue would be required to be decided after considering the pleadings and issues settled in both the suits and the judgment delivered in the previous suit, at the stage of final adjudication.

6. In that view of the matter, the observations made by the learned Judge, City Civil Court in the impugned order on the merits of the defence of Res Judicata may not bind the Court and

shall not influence the final decision on the issue of Res Judicata, if it warrants adjudication.

7. So far as the prayer for permitting the defendants to amend the written statement, suffice to clarify that the defendants may take out an appropriate application for amendment in the written statement before the City Civil Court and thereupon the City Civil Court may decide the same on its own merits and in accordance with law.

8. Subject to the aforesaid clarification, petition stands disposed.

[N. J. JAMADAR, J.]