

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11949 OF 2024

WITH

INTERIM APPLICATION NO. 153 OF 2025

Vijayalaxmi Praful Vagal ... Petitioner

V/s.

Bhushan Ajit Chachad and Ors. ... Respondents

Mr. Bharat Joshi, for the petitioner.

Mr. Prasad B. Kulkarni a/w Mohan Raut I.by Dipak Mane, for the respondent nos. 1 to 3.

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CORAM : N.J. JAMADAR, J.

DATE : 25TH JUNE 2025.

PC:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order passed by the Appellate Bench of the Court of Small Causes in Revision Application No. 90 of 2022, whereby the revision preferred by the petitioner came to be dismissed affirming the order passed by the Trial Court on 4th March 2024, rejecting the application preferred by the petitioner for rejection of the plaint purportedly under the provisions of Order VII Rule 11 of Code on the ground of the bar of res judicata.

3. It is well neigh settled that, the plaint cannot be rejected under the provisions of Order VII Rule 11 of Code on the ground of bar of res judicata, as it warrants investigation into the facts especially the pleadings in the previous suit and the suit in question, the issues settled in the previous suit and the findings thereon.

4. A useful reference in this context can be made to the decision of Supreme Court in the case of ***Srihari Hanumandas Totala Vs Hemant Vithal Kamat and Ors.***¹, wherein the legal position was expounded as under:

25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

25.1 To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

25.2 The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

25.3 To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit;

25.4 Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.

¹ (2021) 9 SCC 99

5. Thus, the impugned order does not suffer from any infirmity so as to warrants interference in exercise of writ jurisdiction.
6. The learned counsel for the petitioner, submits that the petitioner has raised a specific ground of bar of res judicata in the written statement.
7. Issues are yet to be settled.
8. The petitioner is at liberty to file an application before the Trial Court to frame and decide the issue of res judicata as a preliminary issue.
9. In the event such an application is filed, the Trial Court is requested to decide the same on its own merit and in accordance with law, without being influenced by the observations in the impugned orders.
10. In view of disposal of the petition, the interim application also stands disposed.

(N.J. JAMADAR, J)