

ORDER BELOW EXH.-17 IN RCS NO. 113/2016  
(CNR No.MHAU-13-000-190-2016)(Ramesh Vs. Rambhau.

Read application. Perused say given by the plaintiff vide Exh.18. Heard Ld counsels of plaintiff. The defendant No.1 and his counsel absent. It is seen from the record that inspite of giving a sufficient opportunity to the Ld. counsel of defendant No.1 the arugment is not advanced, hence matter proceeded accordingly.

2. On going through the record it reveals that the present application is moved by the defendant No.1 under Order 7 Rule 11 of C.P.C. for rejection of plaint on the ground of absence of cause of action. According to the defendant no.1 plaintiff filed the suit for declaration and mandatory injunction against the defendants. As per the contention of plaintiff defendant No.1 is refused to demolish the construction described in plaint, on 15.12.2014, 04.02.2015 & 21.08.2015. Therefore plaintiff has filed the suit after one year which is beyond the period of limitation. It is further submitted that in view of contention in para No.8 of the plaint he was served notice to the defendant No.2 Municipal corporation on 05.10.2015. Then also having the knowledge the plaintiff has not filed the suit in the year 2015. In such circumstances suit is without any cause of action. Hence prayed for rejection of the plaint under Order 7 Rule 11 of the C.P.C.

3. The application is strongly objected by the plaintiff by way of filing say below Exh.18. It is submitted on behalf of the plaintiff that application is not maintainable Order 7 Rule 11 of the C.P.C. as there is continuous cause of action in the present case. The

defendant No.1 & 2 have not demolished the illegal construction of toilet on road. It is attached to the wall of plaintiff's house where kitchen room is situated. Due to the use of toilet by the defendant No.1 the wall of plaintiff's house is getting damp and ramshackle. It is further submitted that due to this illegally constructed toilet harmful creatures like snakes, rats, cockroaches, scorpions, other insects etc. are entering into the house of plaintiff. In such circumstances the illegal construction of defendant No.1 is necessary to be demolished. As the problem is of continuous nature therefore cause of action is also continuous. The plaintiff requested to defendant No.1 on 01.09.2015 to demolish the said construction but defendant No.1 has not removed the illegally constructed Toilet/WC from public road attached to plaintiff's house, hence cause of action continuous upto this day and will be continuous upto the removal illegal construction of toilet. Therefore, application is devoid of any merit, hence prayed for rejection of it.

4. Having regard to the attending circumstances of the case & considering the entire record it is very much clear that the plaintiff has filed this suit for declaration that defendant No.1 has carried out an illegal construction over public road adjacent to the wall of plaintiff's house and issuing the mandatory direction to defendant No.2 for demolishing the unauthorized and illegal construction of toilet/WC on public road adjacent to H.No. 4-7-41/P, CTS No. 5553/1/1, Fakirwadi, Aurangabad. It is significant to note here that the plaintiff has shown the cause of action in the plaint as 01.09.2016 when he has requested to defendant No.1 to remove said illegal

(( 3 ))

construction and it is continuous since then. It is a matter of record that the defendant No.2 corporation filed the written statement on record vide Exh.22 in which it is submitted that the complaint and grievance of the plaintiff is noted and accordingly spot inspection and further necessary legal action is under process. In view of such circumstances I found that definitely there is dispute about alleged illegal construction of public toilet constructed by defendant No.1.

5. In the light of above discussion and considering the attending circumstances of the case, at this juncture I would like to take recourse of the observation of Hon'ble Bombay High Court in case of Balkrishan Vs. Ajmatkhan reported in 2017 (2) Mh.L.J. 597 in which it is observed that-

In case of rejection of plaint under Order 7 Rule 11 of C.P.C. on the ground of limitation that averments pleaded in the plaint which shows that fresh cause of action arose subsequently, then issue of limitation is mixed question of law and fact. It cannot be decided at threshold. The ground of limitation can be agitated at appropriate stage before trial court. The existence of contentious issues which would be the required to be decided after recording evidence of the parties. Therefore, plaint cannot be rejected under Order 7, Rule 11 of the C.P.C.

6. In view of the above prepositions of law & considering the attending circumstances of the case I found that definitely there appears cause of action constrained to file present suit. Furthermore in view of the contention of the plaintiff that many time he has requested the defendant No.1 to remove the illegal construction of

toilet and as per contention of defendant corporation that spot inspection has been made and further legal action is under process. In the light of above such circumstances application does not come within purview of Order 7 Rule 11 of C.P.C. and liable to be rejected. Hence, I proceed to pass the following order.

ORDER

1. The application stands rejected.
2. Matter be proceeded accordingly.

Date :- 12.06.2018.

Sd/-  
(Dr. Anita S. Newase)  
Civil Judge Senior Division  
Corporation Court, Aurangabad

(( 5 ))

**CERTIFICATE**

I affirm that the contents of this P. D.F. file judgment/order are same, word to word, as per the original judgment/order.

Name of the Stenographer	: R. R. Deshpande
Court A.bad	: Civil Judge S.D.(Corporation),
Date	: 13.06.2018
Order signed by the presiding officer on	: 15.06.2018
Order uploaded on	: 17.06.2018