



ORDER PASSED BELOW EXH.13
IN SPECIAL CIVIL SUIT NO.65/2023

[CNR No.MHKO090005502023]

The application is filed under by the defendant for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.

2. In nut-shell, it is the contention of defendant that the present plaint need to be rejected under Order VII Rule 11 of the CPC as the plaint is hopelessly barred by limitation, likewise, there is bar under Order II Rule 2 of CPC. In support of his contention, the defendant relied on the *Tarvindrasingh Mahendrasingh Dhillan V/s. Ambadas Asaram Mhaske -- 2024 (4) Mh.L.J. 238* ; *Raghwendra Sharan Singh V/s. Ram Prasanna Singh -- (2019) AIR (SC) 1430* ; *Dahiben V/s. Arvinbhai --(2020) AIR (SC) 3310*; *The Church of Christ Charitable Trust V/s. Ponniamman Educational Trust -- 2012 AIR (SC) 3912* ; *T. Arivandandam V/s. T. V. Satyapal and another -- AIR 1977 SC 2421* ; *Prism Reality V/s. Govind Yashwant Khalade -- (2015) 5 ALL MR 620*.

3. The present application is strongly opposed by the plaintiff on the ground that the bar under Order II Rule 2 of CPC is applicable to the plaintiff and the present plaintiff is defendant in earlier suit, therefore, there is no bar under Order II Rule 2 of

CPC. Likewise, the question of limitation is mixed question of law and fact and the plaintiff brought the present suit on fresh cause of action. Therefore, the present application is not tenable and liable to be rejected. The plaintiff, in support of his contention relied on the *M/s. Bengal Waterproof Ltd. V/s. M/s. Bombay Waterproof Manufacturing Co. & Anr. -- AIR 1997 S.C. 1398 ; Jayantilal Chimanlal Patel V/s. Vadilal Purushottamdas Patel -- Hon'ble Supreme Court of India Civil Appeal Nos.3056-3057 of 2017 ; Uniworld Logistics Pvt. Ltd. V/s. Indev Logistics Pvt. Ltd. -- Hon'ble Supreme Court of India Civil Appeal Nos. of 2024 @ Diary No.14716 of 2017, decided on 10.07.2024.*

4. Heard both the sides at length. Perused the case cited supra. On careful perusal of cases cited by defendant, it appears that they are on the point that when the suit being vexatious based on illusory cause of action or when there is clever drafting to bring the suit within the limitation, then it should be nipped in the bud at the first hearing. On other hand, the cases cited by the plaintiff deal with the circumstances in which bar under Order II Rule 2 of CPC applies. It was held therein that it is necessary to produce the evidence regarding the pleading in earlier suit, otherwise bar under Order II Rule 2 of CPC could not be established. The other citations deal with fresh cause of action and reservation of right to file fresh suit.

5. Now, I am taking into consideration the objection raised by the defendant with the guideline given in the cases cited

supra. The first objection is regarding the limitation. It is well-settled principle that question of limitation is mixed question of law and fact. In the case at hand, the plaintiff issued notice to the defendant which was under challenge. After round of litigation, the suit of present defendant came to be dismissed. Now the present plaintiff is seeking possession and arrears on the fresh cause of action. Therefore, from the face of record and on plain reading of the plaint, it cannot be said that suit is not barred from the contents of the plaint.

6. As regard objection regarding Order II Rule 2 of CPC is concerned, the present defendant not filed any documentary evidence regarding the previous suit and more importantly the present plaintiff was defendant in the earlier suit. The opening line of Order II Rule 2 of CPC itself suggests that bar to file fresh suit is for the plaintiff. Admittedly, the present plaintiff not filed any counter-claim in that suit, therefore, bar under Order II Rule 2 of CPC is also not applicable. Hence, this objection is also not sustainable. Therefore, I proceed to pass the following order :-

ORDER

The application is rejected.

Place : Gadhinglaj.
Date : 16.08.2024.

(N. S. Puri)
Civil Judge Senior Division,
Gadhinglaj