

IN THE COURT OF JT. CIVIL JUDGE JR. DN. AND J.M.F.C.,
KAMPTEE, DISTRICT-NAGPUR
(Presided over by Smt. S. A. Patil)

RCS No. 80/2015
Agrawal Bhawan Vs.
M/s.Motiram General
Stores and others.

ORDER BELOW EXH.64
(Passed on 29/08/2018)

This is an application for dismissing the suit filed by the defendants under Section 11 r/w Order II Rule 2 of the Code of Civil Procedure. It is strongly opposed by the Ld. Advocate for the plaintiff by filing his reply below Exh. 67.

2] Perused the written notes of the argument filed by the Ld. Advocate for the plaintiff Shri. R.I.Agrawal vide Exh. 69. Heard the Ld. Advocate Smt. M.D.Bhambhwani for the defendants.

3] The defendants submitted that the plaintiff has filed the present suit for ejection and possession of fair rent and recovery of mesne profit under Section 15 (1), 15(3) and 16(1)(g)(h)(i) and (j) r/w Section 33 of Maharashtra Rent Control Act, 1999. It is the contention of the defendants that the present suit is hit by Section 11 and Order II, R-2 of C.P.C. The Ld. Advocate for defendants argued that they have filed earlier suit bearing R.C.S. No. 49/2007 and the cause title of the earlier suit and the present suit is same and identical. She further argued that in the earlier suit both the parties entered into compromise on 8/10/2010 before the panel of Lok-Adalat and consent decree was drawn accordingly which is binding on both the parties. Thus, the plaintiffs are barred from bringing the present suit. Therefore, the Ld. Advocate for the defendants prayed for dismissal of the present suit on the ground of being barred by res judicata.

4] On the other hand the Ld. Advocate for the plaintiff in his reply vide Exh. 67 submitted that the facts of the present suit and earlier suit bearing R.C.S. No. 49/07 are not same and identical. He further submitted that the contempt petition No. 249/2015 filed by the defendants is dismissed by the Hon'ble Bombay High Court, Nagpur Bench. He vehemently argued that the issue regarding the maintainability of the suit has been already framed. It is their pleading that defendants have breached the compromise deed dated 08/10/2010. Furthermore, the compromise decree prohibiting the plaintiff to file fresh eviction suit is against the public policy. Therefore, he prayed for rejection of the application.

5] Perused the record. After considering the rival pleadings of both the parties following points arise for my consideration. I have recorded my findings thereon for the reasons mentioned below.

Sr.No.	Points	Findings
1	Is the suit hit by principle of Res Judicata as per Section 11 and Order-II, R-2 of C.P.C. ?	No.
2	What order ?	Application is rejected.

REASONS

As to Point No. 1 -

6] At the outset, it is necessary to mention the provision of Section 11 of the C.P.C. It embodies the principle of res judicata. It reads as under-

“11. *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same*

parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court”.

7] The defendants raised contention that the compromise decree in the suit bearing RCS No. 49/2007 is binding on both the parties and it will operate as res judicata to the present suit. The Ld. Advocate for defendants argued that when the controversy has been settled once for all by the compromise decree dated 8/10/2010 between the parties, the plaintiff cannot bring the present suit.

8] Perused the record. It is an admitted fact that there was earlier suit bearing RCS No. 49/07 between the same parties. Perusal of the plaint in the earlier suit shows that it was brought for ejection, possession, arrears of fair rent and inquiry into mesne profit filed under Section 15(2)(3), 16(1)(g)(h)(i) r/w Section 33 of Maharashtra Rent Control Act, 1999. It is pertinent to note that the cause of action for the present suit is the breach of compromise-decree dated 8/10/2010 by the defendants. The Ld. Advocate for the plaintiffs vehemently argued that in the cases eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring cause. He further argued that the present suit is brought as the defendants breached the compromise-decree dated 8/10/2010 and also the period of recovery of arrears of rent in the present suit is different than the period in the earlier suit.

9] The Ld. Advocate for the plaintiff in support of his contentions relied upon the following different authorities of the Hon'ble Apex Court and the Hon'ble High Court. He relied upon the judgment of Hon'ble Apex Court in the case of **Vaish Aggarwal**

Panchayat Vs. Inder Kumar and ors. AIR 2015 SC 3357. In this case the Hon'ble Apex Court held that res judicata involves mix question of law and fact. It requires not only examination of the plaint but also other evidence. It cannot as such be a ground to reject the plaint under O-VII, R-11. He also relied upon the judgment of Hon'ble Bombay High Court, Nagpur Bench, Nagpur in the case of ***Prabhudayal Ramkhilawan Pande Vs. Shantabai Shyamsunder Pande and ors. 2016(1) Mh.L.J. 262.*** In this case the Hon'ble High Court held that the when written statement is filed and issues are also framed, question whether principle of res judicata is attracted or not, could be a question to be decided on merits in suit and not merely on basis of bare perusal of averments in plaint in suit. He further relied upon the judgment of Hon'ble Bombay High Court in the case of ***Mangharam Chuharmal Vs. B.C.Patel and ors. AIR 1972 Bombay 46.*** In this case the Hon'ble High Court held that a fresh suit for possession on the ground of reasonable and bona fide requirement based on identical facts but pleading change of circumstances is not barred by res judicata. He further relied upon the judgment of Hon'ble Apex Court in the case of ***Arjun Lal Gupta and ors. Vs. Mriganka Mohan Sur and ors. AIR 1975 SC 207.*** In this case Hon'be Apex Court held that cause of action for subsequent suit different from causes of action in suits which were compromised, bar of Order-II, R-2 of CPC is not attracted. He also relied upon the judgment of the Hon'ble Apex Court in the case of ***N.R.Narayan Swamy Vs. B.Francis Jagan AIR 2001 SC 2469.*** In this case it is held by Hon'ble Apex Court that successive suits can be filed by landlord on the ground of bona fide requirement or non-payment of rent.

10] It is well settled that consent decree is as binding upon the parties thereto as a decree passed by invitum. The compromise

having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of 'res judicata'. Perusal of clause no. 12 of compromise decree dated 8/10/2010 filed below list of document vide Exh.35 shows that it was agreed between the parties that the party no. 2 that is the plaintiff will not vacate shop no. 568 and 571 from defendants in future. It was further agreed that party no.2 that is the plaintiff can bring the suit against the defendants on the ground of non-payment of rent within stipulated time. In the present case it is the contention of the plaintiff that the defendants have breached the compromise decree dated 8/10/2010. Perusal of written statement (Exh.13) shows that it is a specific pleading of the defendants that the suit is not maintainable in view of the consent decree passed in RCS No. 49/2007. It is pertinent to note that my Ld. Predecessor framed the issues vide Exh. 15 on 15/01/2016 and the issue regarding maintainability of the suit on this aspect is already framed. At present the matter is for cross-examination of plaintiff's witness (PW1). Thus, it is the matter of evidence which can be ascertained after giving the parties an opportunity to lead the evidence and it will be decided on merits. Considering aforesaid reasons, I answer point no. 1 as "No".

As to Point No. 2-

11] In view of negative finding of point no. 1, this application being devoid of merit is liable to be rejected. Consequently, in answer point no. 2, I proceed to pass following order-

ORDER

- 1) The application is hereby rejected.
- 2) Costs in cause.

Kamptee
Date : 29/08/2018.

(Smt.S.A.Patil)
Jt.CJJD, Kamptee.

