

RCS No.55/2021
Prabhakar -VS- Kalpana

ORDER BELOW EXH. 19
(Passed on 17/10/2025)

This application is filed by the defendants as per Order 7 Rule 11 and Section 151 of C.P.C. Plaintiff filed say to the application below Exh.20 and resisted the application.

2] Heard Adv. Shri. Kanungo for the defendants and Shri. Kushwah for the plaintiffs. Perused the application, say, plaint and the documents filed by the plaintiff along with the plaint.

3] As per Order 7 Rule 11, the Court has to strictly relied upon the pleading of the plaintiff and documents, if required, filed by the plaintiff but not the defence of the defendant nor his written statement.

4] Adv. Shri. Kanungo for the defendants submitted that earlier suit is pending. Plaintiff filed written statement in that suit and took the defence that present defendant is the tress-passer in the suit property Now plaintiff coming with the case that defendant is the tenant. Suit is not filed within 12 years as plaintiff purchased the suit property in 2009 and the suit is filed in 2018. Therefore, the suit is time barred. The suit property in both the suits is same and therefore, it must be tried along with the previous suit which is filed by the defendant. The application can be filed at any stage of the suit. Therefore, he prayed to reject the plaint.

5] He relief upon the judgment of Hon'ble Bombay High Court Panji Bench in **Katrina Farnandis and ors. VS Jose Menino Rodrigues and**

anr. 2013(1) Mh.L.J. 367.

6] Adv. Shri. Kushwah submitted that defendant is the tenant of the plaintiff and this fact is admitted by the defendant. Maharashtra Rent Control Act does not give the limitation to file the suit except as mentioned in Section 15 Rent Control Act. The application is false. This application is only filed to prolong the matter and therefore he prayed to reject the application. Adv. Shri. Kushwah submitted that the judgment cited by the defendant is not applicable in the present case.

7] The present suit is filed by the plaintiff for ejectment and possession, arrears of rent, damages and for mesne profit. It is specifically mentioned in the pleadings of the plaintiff that defendant is the tenant. There was rent of Rs.500/- per month. But defendant failed to pay the rent and therefore, notice was issued to the defendant on 28.12.2020. But defendant failed to comply the notice. Therefore, the suit is filed. The suit is seems to be filed on 23.06.2021.

8] Issues are framed below Exh.9 on 07.02.2024. Now the matter is for evidence. It is necessary to mention here that the defendant filed the application below Exh.11 as per Section 10 of CPC for stay of the suit. That application is rejected by this Court on 25.04.2025 by passing order below Exh.11. Then, defendant filed the application below Exh.17 for calling the record and proceeding of RCS No.1/2018 in this matter to which this court by appreciating Section 24 of CPC rejected the application on 13.08.2025. Thereafter, on the very next date i.e. 17.09.2025, this application is filed.

9] Defendant challenges the suit in this application on the

ground of limitation to file the suit. Limitation is a mixed question of fact and law. It is the case of the defendant that plaintiff purchased the suit property in 2009 and after 12 years, he has filed the suit in 2021. Therefore, the suit is not tenable. As mentioned above, while deciding the application under Order 7 rule 11 of CPC, the contents of the plaint are only to be taken into consideration. The plaint specifically speaks that this suit is filed on the ground of ejectment of the defendant from the suit property and she failed to pay the rent as well as the plaintiff wants the suit property for his bonafide need and for the repairing of the suit property. In such circumstances, as mentioned in the application by the defendant that the suit is filed after 12 years after the purchase of the suit property by the plaintiff is not applicable to the present case. The plaint shows that it is filed as per the provisions of Section 16 of Maharashtra Rent Control Act. The plaintiff specifically mentioned in the cause of action in Para No. 9 that he issued notice to the defendant on 28.12.2020 and thereafter the cause of action accrued. In such circumstances considering the contents of the plaint, it shows that it is filed within limitation. On the contrary, the plea taken by the defendant in his application cannot be considered at this stage as there needs a complete evidence for deciding the issue of nature of the possession of the defendant on the suit property.

10] The judgment cited by the defendant is as regards Order 8 Rule 3, 4, 5 of CPC. It is about the denial in the written statement. Therefore, the judgment cited by the defendant is not applicable in the case in hand as it is on the point of denial in the written statement. Therefore, anything which is mentioned by this plaintiff in RCS

No.1/2018 in his written statement can be considered at the time of hearing of the suit in the evidence. The defence taken by this plaintiff in RCS No. 1/2018 cannot be the ground for rejection of this plaint as the contents of the plaint shows that it is filed as per the provisions of Maharashtra Rent Control Act. The plaint shows it is filed within limitation. Therefore, the application is not tenable in the eye of the law. Hence, I pass following order.

- ORDER -

The application is rejected.

Kamptee

Date : 17/10/2025.

(Mohan R. Kamat)

Civil Judge, Junior Division,
Kamptee.