

MHSI100002052018**-: REGULAR CIVIL SUIT NO. 20 OF 2018 :-****-: ORDER BELOW EXH. NO. 23 :-**

This is an application filed by Defendant under Order VII, Rule 11 r/w Section 151 of the Code of Civil Procedure, 1908 (hereinafter refer as "C.P.C." for sake of brevity).

02. It is contended that, the Plaintiff had earlier filed the suit for injunction bearing No. 236 of 2015 against Defendant. The said suit was dismissed for default as per Order IX Rule 3 on 24.04.2017. Order of dismissal of said suit was passed under Order IX Rule 3 of C.P.C. However, as the Defendant always used to appears in the suit, the said order of dismissal ought not to have passed under Order IX Rule 3 of C.P.C. It is further contended that, now the Plaintiff have filed the present suit by making false representation and abusing the process of law. The Plaintiff is now barred to file fresh suit under Order IX Rule 8 and 9 of C.P.C. Hence, the present suit is allowed, it would cause great injustice to Defendant. Hence, it is prayed that, the suit is rejected as per Order VII Rule 11 r/w Section 151 of C.P.C.

03. Learned Advocate for Plaintiff have file the say on behalf of Plaintiff at the backleaf of the application and strongly objected the application. It is contended that, the application is not tenable in the eye of law. The suit bearing No. 236 of 2015 was not decided on merits. The

Plaintiff have file present suit as per cause of action arose on 21.06.2018. Hence, the suit being for permanent injunction is tenable in the eye of law. Hence, it is prayed that application be rejected.

04. Perused the application and say. Heard Learned Advocate for Plaintiff and Advocate for Defendant.

05. Considering the rival contention of both the parties, following points arises for my determination and their findings along with the reasons are as follows-

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the suit is liable to be rejected ?	No
2	What Order ?	Application is rejected as per final order.

-: R E A S O N S :-

AS TO POINT NO. 1 :-

06. The Plaintiff have filed the present application under Order VII Rule 11. However, the contention of application does not disclose anywhere, as to under which clause of Rule 11 the present application has been filed. Further, as per the contentions of Defendant the Plaintiff had already filed the suit bearing No. 236 of 2015 against Defendant which was came to be dismissed for default as per order dated 24.04.2017. However, though the contentions of application shows that, the said suit was filed by Plaintiff against Defendant. However, it nowhere reflect the said suit bearing No. 236 of 2015 was in respect of

same property or the subject matter of suit. The Defendant have not filed any documents on record in support of their application. Though, for the case of argument it is considered that, the earlier suit bearing No. 236 of 2015 was filed by the Plaintiff against Defendant in respect of same suit properties, the suit between the same parties wherein matter is directly and substantially in issue is similar and it has been finally decided by Court, then the present suit would have been barred by law of Res-judicata. However, the Defendant have no where shown that the issue in the present suit was directly and substantially issue in the former suit. It is also necessary to understand that, earlier suit was not decided on merit and was dismissed for default. I am of the opinion that, res-judicata is not applicable in present case.

07. It is further necessary to understand that, the perusal of application shows that, the present suit has been filed after arising of cause of action on 21.06.2018. The earlier suit bearing No. 236 of 2015 appears to have been dismissed or dismissed for default on 24.04.2017 as per the contention of this application. Considering, the nature of suit, I am of the opinion that, the cause of action being arose on 24.04.2017, the present suit is maintainable in the eye of law being suit for permanent injunction. Hence, considering the discussion in the above paragraph I am of the opinion that, suit can not be rejected under Order VII Rule 11. Hence, I answer this point in "**Negative**".

AS TO POINT NO. : 2

08. From the above discussion it has become clear that, the suit cannot be rejected. Hence, the application is liable to be rejected. Accordingly, I proceed to pass the following :

ORDER

- 1) Application is rejected with costs.

Place :- Dodamarg.
Date :- 02/02/2022.

Sd/-
(Y.P.Bavkar)
Civil Judge, Jr. Division
Dodamarg.