



ORDER BELOW EXH.29 IN REGULAR CIVIL SUIT NO.125/2025

The present application has been filed by defendant No.5 for rejection of plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

2. Heard learned Adv. L. S. Khamkar for defendant No.5 and learned Adv. N. M. Wadikar for the plaintiff.

3. After going through the record, following points arise for my consideration and I record my finding thereon for the reasons mentioned thereunder:-

Sr. No.	POINTS	FINDINGS
1)	Whether the plaint is liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 ?	No
2)	What order ?	The application is rejected.

REASONS

4. It is the contention of defendant No.5 that the plaintiff has filed the present suit for seeking relief of injunction. She is the owner of Survey No.17/6. The plaintiff had earlier filed a suit in the Court of Civil Judge Junior Division, Mahabaleshwar on the basis of same grievance

and the copy of plaint of that suit is filed alongwith the present suit. The pleading in the present suit and the earlier suit are on the basis of same cause of action. Therefore, the subsequent suit on same cause of action is not maintainable. Further, the plaintiff has not withdrawn the earlier suit. Therefore, the present suit is barred under the provision of Order II Rule 2 of the Code of Civil Procedure. The suit is also barred by the provision of Order XVIII of the Code of Civil Procedure. Hence, she prayed that the application be allowed and the plaint be rejected.

5. Learned advocate for defendant No.5 placed his reliance on the authority of the Hon'ble Supreme Court in the case of **Cuddalore Powergen Corporation Ltd. Vs. M/s. Chemplast Cuddalore Vinyls Ltd. and Anr., reported in [2025] 2 S.C.R. 123.** The Hon'ble Supreme Court has held that, *“it is established law that the principles governing the applicability of provisions of Order II Rule 2 do not operate as a bar when the subsequent suit is based on a cause of action different from that on which the first suit was based and that the identity of the causes of action in both the suits must be the material consideration before the court which decide the applicability of this provision to a second suit filed by the plaintiff.”*

6. It is the contention of the plaintiff that in R.C.S. No.88/2025, the cause of action arose on the basis of incident dated 22.04.2025. The said suit was filed only against the present defendant No.5 before the Civil Judge Junior Division, Mahabaleshwar. On 25.04.2025, defendant No.5 alongwith other defendants entered in the suit premises illegally and did the overt acts as stated in the plaint. The other defendants are the Government Officers and suit does not lie against them in the jurisdiction of the Civil Judge Junior Division,

Mahabaleshwar. The present suit is filed on the basis of cause of action arose on 25.04.2025. Therefore, no question arises regarding reserving any relief as per Order II Rule 2 of the Code of Civil Procedure. Further, there is no bar of suit under Order XVIII of the Code of Civil Procedure. Therefore, he prayed that the application be rejected.

7. Learned advocate for the plaintiff placed his reliance on the following authorities of the Hon'ble Supreme Court :-

- 1] **Alka Gupta Vs. Narender Kumar Gupta, reported in AIR 2011 SC 9;**
- 2] **Kewal Singh Vs. Lajwanti, reported in AIR 1980 SC 161;**
- 3] **Kashinath Chindhuji Shastri Vs. Haribhau Nathuji Bawanthade, reported in MhLJ 2004 (2) 722.**

8. Upon careful perusal of the authorities cited supra, I am of opinion that the facts are altogether different in those authorities than the case in hand. Therefore, with respect to the authority cited supra, I am of opinion that those are not applicable to the case in hand.

AS TO POINT NO.1:-

9. It is settled position of law that, while deciding an application under Order VII Rule 11 of the Code of Civil Procedure, only the plaint has to be read alongwith the documents filed with it. The present suit is filed by the plaintiff on the basis of the incident occurred on 25.04.2025. It is the contention of the plaintiff that he had filed a suit against defendant No.5 before the Civil Judge Junior Division, Mahabaleshwar on the basis of cause of action arose on 22.04.2025. Therefore, it is apparent on record that there are two distinguish causes

of action available for the plaintiff to initiate proceeding against the defendants. Further, Order II Rule 2 of the Code of Civil Procedure is a triable issue which requires thorough evidence and the plaint cannot be rejected at the threshold. Once the suit appears to be filed on different cause of action, then no question of bar under Order II Rule 2 of the Code of Civil Procedure arises.

10. Defendant No.5 has objected the plaint on the ground that, it is barred under the provision of Order XVIII. Further, no specific allegation has been made under which provision of Order XVIII the plaint is liable to be rejected. Upon perusal of plaint in toto, it appears that it is not barred by any law. Further, the earlier suit which the plaintiff had filed before the Civil Judge Junior Division, Mahabaleshwar is already withdrawn. Therefore, the objection taken by defendant No.5 cannot be sustained. There is no ground to reject the plaint under Order VII Rule 11 of the C.P.C. as the bar under Order II Rule 2 of the C.P.C. is a triable issue and defendant No.5 can very well take defence of the said provision. The authority of **Cuddalore Powergen Corporation Ltd.** cited supra referred by defendant No.5 is not in her favour. In the said authority, the Hon'ble Supreme Court has held that the subsequent suit if filed on the basis of different cause of action is maintainable. Therefore, with respect to the authority cited supra, I hold that it is not helpful to the case of defendant No.5. Hence, I answer point No.1 in the negative.

AS TO POINT NO.2:-

11. In view of my finding as to point No.1, I hold that the application is liable to be rejected. The suit is at preliminary stage. Therefore, I am not inclined to impose costs. Hence, in answer to point

No.2, I pass the following order :-

ORDER

- (1) The application (Exh.29) is rejected.
- (2) No order as to costs.

Date: 04.07.2025
Wai.

(A. A. Pacharne)
Jt. Civil Judge Senior Division,
Wai.