

ORDER PASSED BELOW EXH.20

1) This is an application filed by the defendants for rejection of plaint/petition under Order VII Rule 11 of the Code of Civil Procedure on the ground of principle of Res-judicata and other grounds.

2) Defendants plead that, plaintiffs have filed present suit for possession, eviction from the suit property, recovery of arrears of rent and interest on arrears of rent etc and plaintiffs have annexed certain documents such as lease agreement, earlier suit along with the order, copy of notice and 7/12 extract.

3) Defendants further plead that they were intending to start restaurant business at Wani and was in search of such place, where they came to know through brother in law of defendant no.1 that plaintiffs are willing to let out their Dhaba under name and style "Baithak Dhaba" at Wani on plot nos.4 & 5, admeasuring about 5000 sq.ft. with balding structure of Gat no.99/1K/4/v/5, class-I land which is located on Wani Chandrapur Highway, Wani. The reason of letting out Dhaba is given by plaintiff, that his labour of Dhaba was not available and plaintiff having property business and pharmaceutical business, hence, plaintiff was unable to run the restaurant business. Therefore, defendants contacted plaintiffs and advanced their proposal to plaintiffs who also showed his willingness

to let out the said premises to defendant and after negotiations it was decided that he will charge Rs.30,000/- per month towards rent of the Dhaba and Rs.5,00,000/- has to be deposited as a refundable security to plaintiff by defendant and as the conditions were agreed by both the parties, it was decided to execute and registered leave and license agreement.

4) Defendants further plead that plaintiffs insisted for English draft of the agreement and it was shared with the defendants for correction with his counsel and plaintiffs had agreed to incorporate the changes and correction and accordingly agreement was executed and registered on 14/10/2016 and possession was handed over to the defendants. However, copy of agreement was not supplied till May-2017.

5) Defendants further plead that in May-2017 due to heavy rain, the shed of the Dhaba flew away therefore, defendants requested plaintiffs to get it repaired as the terms of the agreement. However, defendants shockingly learnt that the plaintiffs had not incorporated the changes and suggestions in the agreement which were conceded by him and plaintiffs and their counsel changed the contents of the agreement at the time of registration by taking undue advantage of illiteracy of English of the defendants. Thus, plaintiffs have cheated defendants.

6) Defendants further plead that therefore,

defendants intended to terminate the agreement and sought refund of Rs.5,00,000/- deposit even by issuance of notice dated 16/06/2017 but plaintiffs refused to comply and did not accept notice and defendants paid the rent of June-2017 and defendants are in possession of the suit property and running his business.

7) Defendants further plead that there is no cause of action and locus standi for the present suit as earlier suit of the plaintiffs before Civil Judge (Jr.Dn.) of the year-2017 was dismissed in default on 16/09/2023 which has not been challenged and this new suit has been filed. Moreover, plaintiffs have criminal antecedent and therefore, he has not returned the deposit and did not whisper about this in the plaint and has taken contrary plea of eviction as in the earlier suit he had claimed to be in possession. Moreover, requisite court fees has also not been paid. Moreover, this suit has been filed without challenging earlier dismissal in default order and therefore, this suit is barred by principle of Res-judicata. Moreover, the suit is also barred by limitation as first suit was filed in 2017 and this suit is filed in 2025 and suit should have been instituted in within 3 years of agreement or dispute.

8) Hence, on these grounds, defendants pray for rejection of plaint.

9) Plaintiffs have resisted this application by filing their say vide Exh.22 and contended that the Dhaba was

given on rent for 11 months i.e. from 13/10/2016 by registered agreement which expired on 13/08/2017 and plaintiffs had taken the possession of the said Dhaba and it was not in running condition and when it was being repaired, then defendant no.1 threatened labours of the plaintiffs and restrained them for repairing and therefore, plaintiffs had filed suit R.C.S.No.59/2017 in Wani Court and during pendency of suit, plaintiffs had also filed Police complaint dated 16/10/2017 and 29/11/2017 as defendants had threatened to take forcible possession of the suit property.

10) Plaintiffs concede deposit amount, however, it is contended by them that the agreement expired on 13/09/2017 and as per point no.5 of the agreement on failure of payment of rent before 15 date of every month then there is a provision of 10% as a fine and there is provision of right of cancellation of agreement and this was breached by defendants and possession has also not been handed over and defendant no.1 has criminal antecedent and has threatened to kill him and due to that fear, plaintiffs did not visit the spot.

11) Plaintiffs further plead that the monthly rent is Rs.30,000/- and arrears of rent amount is Rs.19,30,000/- and therefore, he has a locus standi and cause of action to file this suit and cause of action first arose on 16/10/2017, 29/11/2017, on 16/10/2023 when earlier suit was

dismissed in default and on 10/12/2023 when plaintiffs had approached defendants and demanded rent and vacating the property which was refused by defendants. Hence, cause of action is arising every day and hence, suit is within limitation. Hence, plaintiffs pray for rejection of this application.

12) Heard Ld. Counsels for defendants and plaintiffs. Perused entire record.

13) This is suit by both plaintiffs against two defendants for recovery of the arrears of rent of Rs.19,30,000/- with 18% interest, for declaration of termination of the tenancy from 13/09/2017 and entitlement of recovery of future arrears from date of filing suit, for recovery of possession and for inquiry into mesne profit etc.

14) Plaintiffs have pleaded in the suit that the suit property was let out to the defendants by registered agreement dated 13/10/2016 which expired on 13/08/2017 and plaintiffs had taken possession of it thereafter and when it was being renovated, defendants threatened therefore, earlier suit was filed along with police complaints still defendants have taken forcible possession of the suit property and earlier suit was dismissed on 16/09/2023 for want of prosecution and this suit has been filed and contents of the reply Exh.22 have been reiterated in the plaint.

15) Defendants have filed contesting W.S. vide Exh.23 and they have questioned tenability of the suit on the ground of limitation, lack of cause of action, bar of res-judicata by contending that earlier dismissal order has not been challenged and also contended that unilaterally terms of the agreement have been changed by the plaintiffs and their counsel and their suggestions were not incorporated inspite of conceding it orally. The defendants have also taken similar pleas which have been taken in Exh.20 application in their W.S. too.

16) It is settled position of the law that application under Order VII Rule 11 may be considered as per the ambit of plaint/petition and the material beyond the plaint/petition may not be seen. Therefore, the W.S. of the defendant nos.1 and 2 may not be considered and Exh.20 will have to be decided as per the ambit of Exh.01 and annexed documents with plaint.

17) The plaintiffs have annexed certain documents vide Exh.03 list which includes registered lease agreement, Exh.01 of R.C.S.No.59/2017 along with dismissal in default order, copy of notice issued to the defendants dated 22/01/2024 along with postal receipt, 7/12 extract of suit property etc.

18) It is matter of record and even as per the contention of the defendants that earlier suit of the plaintiffs i.e. R.C.S.No.59/2017 which was filed before

C.J.J.D. Wani which was for injunction against obstruction was dismissed in default on 16/09/2023 and there was no adjudication on merit.

19) The principle of res-judicata as per Section 11 of C.P.C. operates for new suit when there is already final adjudication on merit of direct and substantial question which was raised in former suit. However, as noted above there is no final adjudication in the earlier suit and it was dismissed in default. Therefore, principle of res-judicata does not operate.

20) The defendants have conceded possession over the lease property and also conceded non payment of rent after June-2017 and have justified it due to non return of deposit of Rs.5,00,000/-, non repairing of the shed by the plaintiffs and allegation of unilateral changing of the terms of the agreement.

21) The ownership of the suit property of the plaintiffs have not been disputed. Moreover, the present suit is for arrears of rent of Rs.19,30,000/- which was beyond pecuniary jurisdiction of the C.J.J.D. court.

22) Moreover, there is a prayer of recovery of possession therefore, the plaintiffs have prima facie cause of action and case worth adjudication.

23) Moreover, considering the occupation of the suit property by defendants and non payment of rent, cause of

action is continuance and it may not be termed to end on expiry of 3 years as per Article-52 as cause of action prima facie appears to be continuance.

24) Moreover, the prayer of possession is on the basis of title for which limitation is 12 years as per Article - 66 of the Limitation Act. Therefore, the suit prima facie does not appears to be barred by limitation.

25) The plea of questioning tenability of the suit also does not fall into the ambit of Order VII Rule 11 of C.P.C. as earlier suit was dismissed in default and as per Order IX of C.P.C. plaintiffs have option of either restoring the suit or filling the fresh suit.

26) Moreover, the present suit of claim of arrears of rent of Rs.19,30,000/- cannot be maintained in C.J.J.D. court by restoration etc.

27) Hence, the present suit prima facie does not appears to be barred by law.

28) The plea of improper valuation due to security deposit of Rs.5,00,000/- also does not appears to be correct which is the grievance of the defendants and this is suit of the plaintiffs for arrears of rent of Rs.19,30,000/- along with axillary pleas for which plaintiffs have annexed Court fees of Rs.37,230/- on the reliefs claimed and therefore, the court fees paid appears to be sufficient.

29) Moreover, the disputed facts such as unilateral

change of terms, taking contrary pleas, whose possession since inception of dispute etc. do not come within the ambit of Order VII Rule 11 of C.P.C. and it requires full hearing and it may not be adjudicated under Order VII Rule 11.

30) Hence, the plaint may not be rejected as per clause-(a), (b) and (d) of Order VII Rule 11 of Civil Procedure Code.

31) Hence, considering the reasons noted above, I proceed to pass following order.

ORDER

- 1] Application (Exh.20) is hereby rejected.
- 2] Costs in cause.

Dated: 04.11.2025

(P. S. Jondhale)
Civil Judge Senior Division
Wani