

**HIGH COURT OF MADHYA PRADESH**

**BENCH AT GWALIOR**

**SINGLE BENCH**

**BEFORE JUSTICE S.K.AWASTHI**

**Civil Revision No.110/2011**

Mannu Raje Trust

**Versus**

Mohammad Ajad & Others

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Shri Ankur Mody, learned counsel for the applicant.

Shri Gaurav Mishra, learned counsel for the respondent  
No.1.

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**O R D E R**  
**(31.01.2017)**

The applicant has preferred this revision application being aggrieved by the order dated 26.07.2011 pronounced by VIth Additional Civil Judge Class-II, Gwalior in Civil Suit No.41A/2010, whereby the application of the applicant preferred under Order 7 Rule 11 CPC was rejected.

2. The facts leading to filing of the instant case are that the respondent No.1 has represented to be residing in the accommodation allotted to him by the present applicant while the respondent was discharging his duties as an employee in the Museum run by the applicant herein. The respondent claims to be residing in the said premises for last 30 years without there being any interference or objection by the applicant. Although the respondent was threatened by the

applicant that he should vacate the premises within two days failing which he would be forcefully evicted from the suit premises. Feeling aggrieved by such illegal act of the present applicant, the respondent herein filed a suit for permanent injunction against the applicant for the relief that the applicant shall not evict the respondent herein without following the procedure established by law, meaning thereby that the applicant cannot forcefully evict the respondent without decree of the Court.

3. Before adverting to the contentions advanced by the parties, it is necessary to sequentially narrate with the respect to the application preferred by the present applicant under Order 7 Rule 11 CPC. As per the record, the first application under Order 7 Rule 11 CPC was moved on 14.07.2010 which was rejected by the court below by the order dated 05.08.2010. Thereafter, another application, under the same provision of law was filed on 30.03.2011 which was also rejected by the court below on 09.05.2011. Another application under Order 7 Rule 11 CPC has been moved on 25.07.2011 which has been rejected by the impugned order, has prompted the applicant to file the instant revision application before this Court.

4. Learned counsel for the applicant invited attention of this Court to the order dated

28.09.2015 passed by the Coordinate Bench of this Court in Civil Revision No.105/2011, in which this Court while dealing with similar facts allowed the revision after holding that an employee or a Care Taker, who is in possession of the premises due to his/her employment with the employer, has no right to continue in the suit premises upon cessation of employment. Thus, the order dated 28.09.2015 is squarely applicable to the facts of the present case and the trial Court gravely erred in rejecting the application under Order 7 Rule 11 CPC by passing the impugned order.

4. Per contra, learned counsel for the respondent no.1 submitted that the judgment relied upon by the applicant will have no implication on the facts of the present case as the unique feature of the case is that the application under Order 7 Rule 11 CPC was rejected on all similar grounds on earlier occasion by the court below and the order remained unchallenged and has attained finality. Therefore, by making repeated application under the same provision i.e. Order 7 Rule 11 CPC, will not renew the cause of action and will not unsettle the position which has been established by the court below in the pending suit.

5. I have considered the rival contentions of the parties and carefully examined the record. While there is no quarrel to the legal position stated in

the order dated 28.09.2015 pronounced by the Coordinate Bench of this Court in Civil Revision No.105/2011, the Court at the same time cannot close the eyes to unique feature of this case that the applicant herein had not asserted this ground at the time of filing the first application under Order 7 Rule 11 CPC which was rejected by the Court below on 05.08.2010. Further another application has been moved on this ground but the rejection of the same again remained unchallenged. It is only after rejection of the third application that the revisional jurisdiction of this Court has been invoked by the applicant.

**6.** In order to place the observation made herein above in the context, it would be appropriate to refer the judicial pronouncement in which it has been held that the principle of res judicata has equal application as between two stages in the same proceedings. To put it differently, if at an earlier stage of the same suit, identical application had been moved and the same had been rejected then the subsequent application under the same provision of law will not be maintainable being defeated by the principle of resjudicata. Even otherwise, if the grounds mentioned in the previous and subsequent applications under Order 7 Rule 11 CPC are different, then also the subsequent application would be barred by the principle of constructive

resjudicata, as the ground raised in the subsequent application was available at the time when the previous/first application under Order 7 Rule 11 CPC was moved. In this regard, the judgment pronounced by the Hon'ble Supreme Court in the case of **U.P. State Road Transport Corporation Vs. State of U.P. & Another** reported in **2005 (1) SCC 444**, is relevant, The applicable portion is reproduced below:-

*“11. The principle of resjudicata is based on the need of giving a finality to judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of the Code of Civil Procedure in this respect. Res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to reagitate the matter again at a subsequent stage of the same proceedings. (See Satyadhyan Ghosal v. Deorajin Debi).”*

7. Drawing strength from the observation made herein above and the reproduced portion of the judgment pronounced by the Hon'ble Supreme Court, this Court has no hesitation in concluding that the order of the trial Court does not suffer from any illegality and the judgment pronounced in Civil Revision 105/2011 is distinguishable on facts. Further, it is observed that merely because this revision application is being dismissed and

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the reliance placed on the judgment dated 28.09.2015 is distinguished, the same would not mean that the ratio of the said judgment is not applicable to the facts of the case and the trial Court shall be at liberty to decide on the question of applicability of the judgment, by exercising its own wisdom without being influenced by the observations made in this order, which are confine to decide only the legality of the rejection of the application under Order 7 Rule 11 CPC..

Resultantly, the Civil Revision application is hereby dismissed.

**(S.K.Awasthi)**  
**Judge**

AK/-