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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 40 OF 2013
WITH
CIVIL APPLICATION NO. 180 OF 2013
IN
SECOND APPEAL NO. 40 OF 2013**

Mr. Dashrath Bapu Tungar ... Appellant

Versus

Mrs. Sitabai Pandurang Jadhav and Ors. ... Respondents

Mr. Rameshwar Gite for the appellant.

Mr. Pravartan Pathak for respondent nos. 1, 2, 4 to 7.

**CORAM : Smt. R.P.SondurBaldota, J.
DATED : February 02, 2015**

P.C.

1. The second appeal is directed against the judgment and order dated 6th September, 2012 by which the District Court, Nashik has allowed the appeal preferred by the respondents against the decree of the trial court partly allowing the suit filed by them. At para 5 of the impugned order, the lower appellate court refers to the absence of the present appellant and his advocate and records that the court has perused the records and proceedings of the trial court and heard the advocate for the respondents herein for granting complete relief sought in the suit.

2. Mr. Gite, learned counsel for the appellant submits that considering the position of law, the appellant herein could have and ought to have filed an application before the lower appellate court for setting aside the exparte order of the lower appellate court. He submits that he has instructions to withdraw the second appeal in order to enable the appellants to prefer appropriate application before the District Court. He also requests for the continuation of the ad interim order passed in the present appeal for a reasonable period, which will enable the appellants to file an application as desired by them. Therefore, the second appeal is allowed to be withdrawn. Ad interim order dated 12th June, 2013 is continued for the period of six weeks from today.

3. In view of the withdrawal of the appeal, nothing survives in the Civil Application and the same is accordingly disposed of.

(Smt R.P. SondurBaldota,J.)