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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 194 OF 2015

Shri Ashok Kataria

.. Petitioner

Vs.

Yash Platinum Co-operative Housing
Society and others

.. Respondents

Mr.Sugandh B.Deshmukh, Advocate for the Petitioner.

CORAM : R. G. KETKAR, J.

DATE : 22th JUNE, 2015

P.C. :

. Heard Mr.Sugandh B.Deshmukh, learned Counsel for the petitioner.

2. By this petition under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the petitioner-original defendant has challenged the order dated 01/01/2015 passed by the learned Civil Judge, Senior Division, Pune below Exhibit 16 in Special Civil Suit No. 1192 of 2013. By the impugned order, the learned trial Judge rejected the application taken out by the petitioner under Order 7 Rule 11 of C.P.C. on the ground that by order dated 06/08/2014, he had already held that the Civil Court has jurisdiction to entertain and try the suit and is not liable to be dismissed under Order 7 Rule 11 of C.P.C. Mr.Deshmukh states that application dated 27/09/2013 filed by the petitioner does not raise specific ground of

maintainability of the suit in view of Section 433A of the Bombay Provincial Municipal Corporations Act, 1949 (for short 'Act'). Upon telephonic instructions from the petitioner – Mr.Ashok Kataria, he seeks permission to withdraw the application at Exhibit 16 with liberty to take out a fresh application under Order 7 Rule 11(d) of C.P.C by raising contention as regards maintainability of the suit in view of Section 433A of the Act.

3. In view of above, petition is allowed to be withdrawn along with application at Exhibit 16. Consequently, this Civil Revision Application does not survive and the same is disposed of with liberty to take out application under Order 7 Rule 11(d) of C.P.C. raising contentions based on Section 433A of the Act. It is expressly made clear that I have not examined merits of the proposed application and all the contentions of the parties in that regard are expressly kept open. If such application is made, the trial Court will decide it on its own merit and in accordance with law.

(R. G. KETKAR, J.)