

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11031 OF 2013

Shri. Sudhir Govind Chougule

.. Petitioner

Versus

Shri. Ganpat Baburao Dalvi

(Since deceased through his legal heirs)

Shri. Dilip Ganpat Dalvi and another

.. Respondents

Mr. R. M. Pethe, for the Petitioner.

Mr. Surel S. Shah, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 14th DECEMBER, 2015

PC.

1. The Learned Counsel for the Petitioner Mr. R. M. Pethe on instructions of the Petitioner makes a statement that the Petitioner/ original Plaintiff would withdraw Regular Civil Suit No.165 of 2010 with liberty to file a fresh suit on the same cause of action including the case set out in the amendment application. In view of the said statement made by Mr. R. M. Pethe, it is not necessary to consider the impugned order dated 23.04.2013 rejecting the application for amendment of the plaint on merits. The same to accordingly stand set aside. The Petitioner/ original Plaintiff is permitted to withdraw the instant suit and file a fresh suit on the same cause of action including on the basis of the case set out in the

amendment application. The Learned Counsel appearing on behalf of the Respondent herein i.e. Defendant to the suit has no objection to the said course of action being followed. However, he states that the contentions of the parties be kept open. Needless to state that though the suit is allowed to be withdrawn with liberty, the contentions of the parties are kept open for being urged in any fresh suit that would be filed.

[R.M. SAVANT, J]