

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9598 OF 2015**

Narayan Anand Shelar

..Petitioner

Vs.

Ismail Ibrahim Dhariwala & Ors.

..Respondents

**Mr. G. S. Godbole i/b Mr. D. S. Patil and Mr. Akshay Petkar for the
Petitioner**

Mr. S. K. Shinde i/b Ms. Jayshree Thakkar for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 15th OCTOBER, 2015

P.C.

1 The order dated 10-8-2015 allowing the application Exhibit 23 for withdrawal of the Suit, however issuing directions vide clauses 2 and 3 of the operative part of the said order is taken exception by way of the above Petition.

2 The Learned Counsel Mr. Shinde appearing on behalf of the Respondent No.1 / Plaintiff and the proponent of the application Exhibit 23 on the instructions of the Respondent No.1 who is personally present in court along with his nephew Murtuza Diwan, makes a statement that the order allowing the withdrawal of the Suit be maintained. However, in so far as the directions issued vide clauses (2) and (3) they be deleted and the Respondent No.1/Plaintiff be permitted to file a fresh Suit after joining the Petitioner as party Defendant to the said fresh Suit.

3 In view of the said statement made by the Learned Counsel for the Respondent No.1, it is not necessary to consider the impugned order on merits. The impugned order in so far as clauses (1) and (4) would accordingly be retained and in so far as the directions contained in clauses (2) and (3) of the impugned order, the same would stand deleted. Upon the retention of clauses 1 and 4 in terms of the statement made by the Learned Counsel for the Respondent No.1, the Respondent No.1 would be at liberty to file a fresh Suit by joining the Petitioner as a party Defendant to the said fresh Suit for the reliefs claimed in the present Suit or such other reliefs as the Plaintiff deems it appropriate to claim. Needless to state that the defence / defences of the Petitioner are kept open for being taken in the said fresh Suit that would be filed.

4 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]