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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11161 OF 2015

Shri Nandkishor Vishnu Sawant .. Petitioner

Vs.

Shri Arvind Mahadev Sawant .. Respondent

Mr.Abhijit P. Kulkarni, Advocate for the Petitioner.

CORAM : R.G.KETKAR, J.
DATED : 03rd DECEMBER, 2015

P.C. :

. Heard Mr.Abhijit P. Kulkarni, learned Counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 06/07/2015 passed by the learned Principal District Judge, Sindhudurga - Oras below Exhibit No. 22 in Regular Civil Appeal No. 153 of 2014. By that order, the learned District Judge rejected the application made by the petitioner – original defendant under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amending the written statement. The petitioner has also challenged the order dated 06/07/2015 passed below Exhibits No. 23 & 24. By Exhibit No. 23, petitioner prayed for framing following issue :

'Whether the City Court has jurisdiction to try and entertain this Suit ?'

3. By application at Exhibit 24, petitioner requested the Court to frame additional issue namely 'Whether the plaintiff proves that he is an exclusive tenant of the suit land ?'

4. Mr.Kulkarni, upon taking instructions from the petitioner who is present in the Court, seeks permission to withdraw this Petition. He submits that in case the Appeal is decided against the petitioner, liberty may be reserved to raise challenge to the impugned orders in further proceedings, if occasion so arises.

5. In view thereof, Petition is allowed to be withdrawn. It is, however, expressly made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned orders, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)