

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER (ST) NO. 34953 OF 2015****ALONGWITH****CIVIL APPLICATION (ST) NO.34956 OF 2015****IN****APPEAL FROM ORDER (ST) NO. 34953 OF 2015****M/s.Supreme Indosaigon Associates****..... Appellant****VERSUS****M/s.Aditya Enterprise & Ors.****..... Respondents**

Mr.Girish Godbole, i/b. Mr.Rushil Mehta for the Appellant.

Mr.Yadunath Chaudhari, a/w. Mr.Omkar Kulkarni for the Respondent No.1.

CORAM : R.D. DHANUKA, J.**DATED : 22nd DECEMBER, 2015****P.C.**

Mr.Godbole, learned counsel appearing for the appellant on instruction from Mrs.Jaswant Joshi, authorized representative of the appellant who has affirmed and verified this civil application seeks liberty to withdraw this appeal and also Notice of Motion No.3292 of 2015 filed before the learned trial judge with liberty to file a separate suit or any other appropriate proceedings on the ground that his client has not filed any substantive suit so far nor any counter claim in the present suit filed by the original plaintiff. Mr.Chaudhari, learned counsel appearing for the respondent no.1 on instruction states that he has no objection if the present appeal as well as notice of Motion No.3295 of 2015 which was filed by the appellant herein are allowed to be withdrawn with liberty as prayed is granted. Statement is accepted. He further states on instruction from Mr.Tushar Joshi, partner of respondent no.1 that the respondent no.1 would not create any third party rights in

respect of the share of the appellant in the suit property. Statement is accepted.

2. In view of the statement made by the learned counsel for the appellant and respondent no.1, the appellant is granted liberty to withdraw this appeal and also the notice of Motion No.3295 of 2015 with liberty to file a substantive suit or any other appropriate proceedings and pray for similar interim reliefs or any other additional reliefs as the appellant so desire. If any such proceedings are filed, the appropriate court shall consider the same on its own merits. It is made clear that the appropriate court or any other authority before whom such proceedings are filed by the appellant shall not be influenced by the prima facie observations made by the learned trial judge and the conclusion drawn in the impugned order and shall decide the matter on its own merits.

3. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]