

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

935 WRIT PETITION NO. 12480 OF 2015

LAXMINARAYAN HIRALAL KABRA AND ANOTHERS
VERSUS
DEELIPKUMAR RAMGOPAL KABRA AND OTHERS

...
Advocate for Petitioners : Indani Madanlal S.
Advocate for Respondents 1 and 2 : K.D. Jadhav
Advocate for Respondents 3 : S.G. Bobade
...

CORAM : T.V. NALAWADE, J.
DATED : 2nd December, 2016.

ORDER :

1. The petition is filed to challenge the order made by learned Civil Judge, Junior Division, AUSA on Exh. 87 in R.C.S. No. 62/2010. Both the sides are heard.

2. The suit is filed for reliefs of declaration and injunction. Issues are also framed. On 22.5.2015 plaintiff filed application simply for withdrawal of the suit and for permission to file new suit. It can be said that there was no compliance of provisions of Order 23, Rule 1 and also Rule 3 of Civil Procedure Code. No reason, no cause of action was mentioned in the application. In view of these circumstances and as the learned counsel for petitioners submitted that the plaintiff lost possession after filing of the suit and he needs to file the suit for possession also, this Court holds that he needs to be given an

opportunity to file another application under aforesaid provisions. Other side has opposed the proceeding by contending that evidence was also filed and as the application was not in proper form and no ground was made out to satisfy the Court, the plaintiffs are not entitled to withdraw the suit and file fresh suit in respect of the same subject matter. It is true that no fault can be found in the order. But in view of the aforesaid circumstance, this Court holds that fresh application stating cause of action and other particulars can be allowed to be filed.

3. In the result, the petition is disposed of as dismissed with aforesaid observations. There is liberty to file fresh application under the aforesaid provisions.

[T.V. NALAWADE, J.]

SSC/