

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 4969 OF 2014

NIKUNJ DEVELOPERS,
THROUGH HARESH NATWARLAL
SANGHAVI

...Petitioner

Versus

BALKRUSHNA RAMCHANDRA PATIL
AND ORS

...Respondents

....

Mr. Atul Damle, Senior Counsel a/w. Mr. Yadunath Chaudhari
a/w. Omkar Kulkarni i/b. Reena Salunkhe, Advocate for the
Petitioner.

Ms. Neeta Karnik, Advocate for Respondent Nos.1 to 5.

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CORAM : R. G. KETKAR, J.

DATE : 18th MARCH, 2016

P.C.

1. Heard Mr. Atul Damle, learned Senior Counsel for the petitioner and Ms. Neeta Karnik, learned Counsel for respondent Nos.1 to 5.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.26' has challenged the judgment and order dated 17.9.2013 passed by learned Civil Judge, Junior Division, Vasai below Exh.68 in Regular Civil Suit No.417/2009 as also the judgment and order

dated 21.2.2014 passed by learned District Judge-1, Vasai in Misc. Civil Appeal No.56/2013. By these orders, the Courts below dismissed the application made by defendant No.26 under order 39 Rule 4 of Code of Civil Procedure, 1908 (for short, 'CPC') for vacating the order dated 24.8.2011 passed below Exh.5.

3. Upon taking instructions from Mr. Haresh Natwarlal Sanghavi (petitioner), Mr. Damle seeks permission to withdraw the application Exh.68 with liberty to file fresh application under Order 39 Rule 4 of CPC for variation of order dated 24.8.2011 passed by the trial Court below Exh.5. He states that within two weeks from today, the petitioner will file application giving all the details and serve copy in advance on the Advocate appearing for respondent Nos.1 to 5 in the trial Court. He further submits that learned trial Judge may be directed to dispose of said application uninfluenced by the observations made in the impugned order. Ms. Karnik states that within two weeks from receipt of the application from defendant No.26 under Order 39 Rule 4 of CPC giving all the material details and particulars, respondent Nos.1 to 5 will file reply within two weeks thereof and serve copy in advance on the Advocate for defendant No.26. She

further states that all contentions of respondent Nos.1 to 5 may be kept open.

4. In view thereof, on motion made by Mr. Damle, the Petition is allowed to be withdrawn with liberty as prayed for. It is made clear that grant of liberty shall not be considered as an expression on merits of the case either way. All contentions of the parties are expressly kept open. If defendant No.26 files application, in the aforesaid terms giving all the details, learned trial Judge will decide the same uninfluenced by the observations made in the impugned order. Learned trial Judge is requested to decide the application within four weeks of receipt of reply of respondent Nos.1 to 5.

(R. G. KETKAR, J.)

Deshmane (PS)