

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 6886 OF 2014

Smt. Parveen Khan and Ors.

... Petitioners.

V/s.

Smt. Gomiben Bhagla and Ors.

... Respondents.

Mr. S.S. Patwardhan for the Petitioners.

Mr. Omkar Nagvekar i/b. Prabha Badadare for Respondents 1 to 5.

CORAM : N.M. Jamdar, J.

29 September, 2016.

Oral Order :-

Notice was issued in this Petition for final disposal. The Respondents are served. Taken up for final disposal.

2. An application filed by the Petitioners under provisions of Order 23 Rule 1(3) of Code of Civil Procedure has been rejected by the learned Civil Judge, Senior Division, Daman. The Petitioners, by this application had prayed for withdrawal of the Suit with a liberty to file a fresh suit. The learned Civil Judge has found that there is a formal defect by reason of which the suit must fail and

there exist grounds for allowing the Plaintiff to institute a fresh suit as prayed. Having rejected the application to withdraw the suit, the right of the Petitioners to take out an application for amendment is not foreclosed. The Petitioners can always take out an application for amendment of the plaint which according to the Petitioners is needed to remove the formal defect. Since this remedy is available to the Petitioners, which the learned Counsel for the Petitioners states that that will be availed off, no interference is necessary in this Petition. If an application for amendment is made, the learned Civil Judge will consider the same after giving an opportunity to the Respondent and the same will be decided on its own merits. The learned Civil Judge will keep justice oriented approach in mind while deciding the application and make an endeavour to decide the suit on merits.

3. The Writ Petition is disposed of in the above terms.

(N.M. Jamdar, J.)