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

WRIT PETITION NO. 10714 OF 2012

M/s. U.S. Roofs Ltd.

... Petitioner.

V/s.

Smt. Rajubai Gomaji Mhatre.

... Respondent.

Mr. Abhishekh Dubey a/w. Nishant Tripathi i/b. M. Tripathi & Co.
for the Petitioner.

None for Respondent.

CORAM : N.M. Jamdar, J.

18 August, 2016.

Oral Order :-

By way of this Writ Petition the Petitioner challenges the order passed below Exhibit 20 in Regular Civil Suit No.234 of 2006 rejecting the application filed by the Petitioner for withdrawal of the Suit with liberty to file fresh suit.

2. The Petitioner filed Regular Civil Suit No. 234 of 2006 in the Court of Civil Judge, Junior Division, Panvel for simplicitor injunction against the Respondent. The suit proceeded ex-parte and no written statement was filed. On 2 February 2012, the Petitioner moved an application under Order 23, Rule 1, Sub-Rule 3 to withdraw the suit with liberty to file a fresh suit. It was stated that

during the pendency of the suit on 11 August 2008, City and Industrial Development Corporation (CIDCO) allotted the suit plot to the Defendant, who in turn transferred it to the some third party by a tripartite agreement. The Petitioner accordingly prayed that it has become necessary to withdraw the suit to file a substantive suit against the Defendant and for declaration of a specific performance. This application is rejected by the impugned order.

3. Heard the learned Counsel for the parties. Perused the impugned order. In the impugned order itself the learned Judge has clarified that the cause of action which the Petitioner proposes to pursue is different than the one which is involved in the present suit. Though the application for withdrawal of the suit with liberty has been rejected on the ground that ingredients of Order 23, Rule 1, Sub-Rule 3 have not been satisfied, the learned Judge has amply made it clear that a separate suit filed will not be barred since it is an entirely different cause of action. This position having been clarified by the learned Judge, there is no prejudice to the Petitioner, who can always institute a separate suit, if it is permissible in law.

4. In the circumstances, it is not necessary to exercise equitable supervisory jurisdiction and set aside the impugned order. The Writ Petition is accordingly disposed of. Rule discharged. No order as to costs.

(N.M. Jamdar, J.)