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

***WRIT PETITION NO. 1554 OF 2015***

Gagan Harilal Machle.

... Petitioner.

V/s.

Subrao Balu alias Biru Dhangar & Ors.

... Respondents.

*with*

***WRIT PETITION NO. 10224 OF 2016***

Subrao Balu alias Biru Dhangar.

... Petitioner.

V/s.

Gagan Harilal Machle & Ors.

... Respondents.

Mr. Mandar Limaye for the Petitioner in WP 1554/15 and for Respondent 1 in WP 10224/16.

Mr. Manoj Patil for the Petition in WP 10224/16 and for Respondent 1 in WP 1554/15.

Mr. Sandeep Koregave for Respondent 3 in WP 10224/16.

***CORAM : N.M. Jamdar, J.***

***26 September, 2016.***

**Oral Order :-**

Heard learned Counsel for the parties. Leave to amend the prayer clause.

2. These two Petitions arise from the same Suit i.e. Regular Civil Suit No. 382 of 2001 pending on the file of the learned Joint Civil Judge, Junior Division, Kolhapur by order dated 19 September 2016, they have been directed to be heard together. Writ Petition No. 1554 of 2015 is filed by the Plaintiff in the Civil Suit No. 382 of 2001 being aggrieved by orders closing the evidence of the Petitioner – Plaintiff, and rejecting the application for recall of witness. The Writ Petition No. 10224 of 2016 is filed by the Defendant No.1 challenging the orders passed by the learned Civil Judge, Junior Division closing the evidence of Defendant No.1. By order passed in Writ Petition No. 10224 of 2016 on 14 November 2014, the proceedings in the suit have remained stayed for last almost two years. The resultant situation is that the evidence of both the Plaintiff and Defendant has been closed and they are aggrieved by the same and the Suit has remained stayed for last two years.

4. Perusal of the impugned order indicates that the learned Civil Judge has found that in the application for recall of the orders, both the Petitioner – Defendant No.1 have not given satisfactory details neither have annexed any medical certificate for absence of providing any details in the applications. The view taken by the learned Civil Judge cannot be faulted. At the same time, considering the fact that both the Plaintiff and Defendant are aggrieved by

closure of their respective evidence, I am of the opinion that the liberty be given to them for filing fresh applications for giving reasons in support of their case. The learned Counsel for the parties also assure that if the applications are made by both the Plaintiff and Defendant, they will not contest each others applications. This statement is accepted. Considering the fact that the closure of evidence of both the Plaintiff and Defendant would lead to a situation where resolution of the dispute on merits will become difficult, the learned Civil Judge will consider the applications. Furthermore, the parties have agreed not to contest their applications. With this liberty, both these Petitions are disposed of.

*(N.M. Jamdar, J.)*