

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12057 OF 2016

Uttam T. Jain ... Petitioner
Vs.
Vishal S. Nagaria ... Respondent

Mr. Ranjeev Carvalho a/w. Mr. Rupesh Geete and Mr. Anand Chovatia i/b.
I.C.Legal for Petitioner.
Mr. Joydeb Saha a/w. Mr. Manish N. Bijutkar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 30, 2016

P.C. :

Heard Mr. Carvalho, learned Counsel for petitioner and Mr. Saha, learned Counsel for respondent.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the judgment and order dated 07.09.2016 passed by the learned trial Judge on an application filed by the defendant for recasting of issues. By that order, the learned trial Judge observed that the issues must be on the basis of the plaint and not on the defence. The matter was heard at length on 29.11.2016 and was adjourned till today so as to enable the learned Counsel for the petitioner-defendant to take instructions as to whether defendant is ready and willing to file fresh application for recasting of the issues.

3. Upon taking instructions, he seeks permission to withdraw this Petition with liberty to file fresh application for recasting issues. He further states that the learned trial Judge may be directed to decide the application uninfluenced by the observations made in the impugned order. He assures that on or before 02.12.2016, defendant will file

application and serve copy in advance on the other side.

4. In view thereof, on the motion made by Mr. Carvalho, Petition is allowed to be withdrawn with liberty as prayed for. Application for recasting issues shall be filed and served on the other side on or before 02.12.2016. The learned trial Judge will decide the application, uninfluenced by the observations made in the impugned order. Parties including the trial Court to act on the authenticated copy of this order. Mr. Carvalho assures that he will serve copy of this order on the other side. Petition disposed of.

(R. G. KETKAR, J.)

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