

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1054 OF 2016**

Akbar Husain Naikwadi and Anr

..Petitioners

Vs

Balkhan Husain Naikwadi and
Ors

.. Respondents

Mr. Vikas Mali a/w Mr. Dilip Shinde, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.

DATE : 04/02/2016

PC:

1. Heard Mr. Vikas Mali, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 21.9.2015 passed by the learned District Judge-2 Islampur below Exh.44 in Regular Civil Suit No. 15 of 2011. By that order the learned District Judge rejected the application made by the petitioners herein (appellant in the District Court) under Order 41, Rule 27 of C.P.C for production of additional evidence.
3. During the course of hearing, Mr Mali, upon taking instructions from instructing Advocate fairly stated that no reasons are given in the application Exh.44. He, therefore, seeks permission to withdraw application Exh.44 with liberty to file fresh application giving necessary details as required under Order

41, Rule 27.

4. In view thereof, on the motion made by Mr Mali, application Exh.44 is allowed to be withdrawn with liberty as prayed for. Grant of liberty shall not be construed as an expression of opinion on merits either way. It is made clear that all objections of the respondents in appeal including objection as regards maintainability of proposed proceedings are expressly kept open. In view of withdrawal of application Exh.44, order dated 21.9.2015 stands dissolved.

5. If such application is taken out by the petitioners/appellants, learned trial Judge will decide the same in accordance with law and on its own merits uninfluenced by the observations made in impugned order and by this order. Order accordingly.

(R.G.KETKAR, J.)