

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

**APPEAL FROM ORDER (ST.) NO.35227 OF 2015
along with
CIVIL APPLICATION (ST.) NO.35228 OF 2015
in
APPEAL FROM ORDER (ST.) NO.35227 OF 2015**

M/s.Supreme Indosaigon Associates .. Appellant/Applicant

Vs.

M/s. Aditya Enterprise & Anr. .. Respondents

Mr.Rushil Mehta for the appellant/applicant.

Ms.Perna Lachandani i/by Mr.Omkar Kulkarni for the respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 11th January 2016

P.C.

. Learned counsel appearing for the appellant, on instructions, seeks liberty to withdraw this appeal and also Notice of Motion No.3295 of 2015 filed before the learned trial judge with liberty to file a separate suit or any other appropriate proceedings on the ground that his client has not filed any substantive suit so far nor any counter claim in the present suit filed by the original plaintiff. Learned counsel appearing for the respondent no.1, on instructions, states that he has no objection if the present appeal as well as notice of Motion No.3295 of 2015 which was filed by the appellant herein are allowed to be withdrawn with liberty as prayed is granted. Statement is accepted. He, on instructions, further states that the respondent no.1 would not create any third party rights in respect of the share of the appellant in the suit property. Statement is accepted.

2. In view of the statement made by the learned counsel for the appellant and respondent no.1, the appellant is granted liberty to withdraw this appeal and also the notice of Motion No.3295 of 2015 with liberty to file a substantive suit or any other appropriate proceedings and pray for similar interim reliefs or any other additional reliefs as the appellant so desire. If any such proceedings are filed, the appropriate court shall consider the same on its own merits. It is made clear that the appropriate court or any other authority before whom such proceedings are filed by the appellant shall not be influenced by the prima facie observations made by the learned trial judge and the conclusion drawn in the impugned order and shall decide the matter on its own merits.

3. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

R.D. DHANUKA, J.