

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.556 OF 2015
IN
NOTICE OF MOTION (L) NO.2370 OF 2014
IN
SUIT (L) NO.994 OF 2014

Shri Madhavlal Narayanlal Pittie. .. Appellant

Vs

M/s. Manas Shelters Pvt. Ltd. And Others. .. Respondents

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Shri H.Devrajan and Shri B.N. Shukla i/b D.J. Kamdin & Co for the Appellant.

Shri A.R. Patil i/b Ms. Bina R. Pai for the Respondent No.1.

Shri P.P. Chavan i/b Ms. N.N. Thakkar for the Respondent No.4.

Shri Nikhil Patil i/b Prabhakar Jadhav for the Respondent No.5.

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CORAM : A.S. OKA & P. D. NAIK, JJ

DATED : 7TH APRIL 2016

PC.

1. Not on board. Taken on board.

2. The learned counsel appearing for the Appellant states that the affidavit of the Appellant in terms of Clause 2 of the order dated 10th March 2016 is ready and the same is tendered on record. The same is taken on record and marked "X" for identification.

3. On instructions, the learned counsel appearing for the Appellant seeks permission to withdraw this Appeal with liberty to file

an Application under Rule 4 of Order XXXIX of the Code of Civil Procedure, 1908 before the learned Single Judge. He prays that in the event the injunction order which is impugned is not vacated, liberty may be reserved to the Appellant to prefer fresh Appeal for challenging the order dated 15th June 2015. We have heard the learned counsel appearing for the Respondents. By keeping open the contentions of the Respondents, the prayer made by the learned counsel appearing for the Appellant deserves to be accepted. Accordingly, we pass the following order:

ORDER :

- (a) The Appeal is disposed of as withdrawn with liberty to the Appellant to apply under Rule 4 of Order XXXIX of the Code of Civil Procedure, 1908 before the learned Single Judge for vacating/modifying the impugned order dated 15th June 2016;
- (b) All contentions of the parties on such Application, if made, are kept open;
- (c) In the event the Application made by the Appellant is rejected, if permissible in law, it will be open for

the Appellant to prefer a fresh Appeal for challenging the impugned order date 15th June 2015;

- (d) All contentions of the parties on this aspect are kept open;
- (e) Notice of Motion does not survive and the same is disposed of.

(P. D. NAIK, J)

(A.S. OKA, J)