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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6021/2017

Shivram Tukaram Gundre.

...Petitioner..

Versus

Shrimant Tulsiram Biradar & another.

...Respondents...

.....

Shri S.S. Shinde, Advocate h/f Shri A.N. Gaddime,
Advocate for petitioner.

.....

CORAM: M.S. SANKLECHA, J.

DATE: 03.05.2017

ORDER :

1] This petition challenges the order dated 18.3.2017 passed by the learned Civil Judge, Junior Division, Deoni Dist.Latur. The impugned order rejected the petitioner's (plaintiff) application to withdraw the suit with liberty to file a fresh suit on the same cause of action.

2] The suit is of the year 2008. The petitioner's evidence including his cross-examination is over. The respondents (defendants) had filed their affidavit evidence and were awaiting cross-examination by the petitioner. At that stage, the petitioner sought

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permission to withdraw the suit with liberty to file a fresh suit on the basis of same cause of action. This on the ground that there was formal defect in the pleadings.

2] The impugned order dated 18.3.2017 records the fact that the suit, as filed by the petitioner, was that he was owner and possessor of the suit property and being in need of funds, obtained the amounts from the respondent no.1. At that time, he executed the saledeed of the suit property in favour of respondent no.2 (brother of respondent no.1) as security for the loan received by him. The plaint further states that the entire amount has been repaid and in that view, the plaint seeks cancellation of the saledeed executed by the petitioner in favour of the respondent no.2.

3] The impugned order records the fact that no formal defect in the suit, as submitted by the petitioner, has been pointed out, which would permit withdrawal of the suit with liberty to file a fresh suit on the same cause of action.

4] In fact, the application filed by the petitioner proceeds on the basis that the Advocate of the plaintiff had not mentioned the correct facts in the plaint as

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filed. Thus, leading to a formal defect. Further the application also states that the plaintiff seeks to file a fresh suit on the same cause of action alongwith changed facts and circumstances. The impugned order has appropriately rejected the application for withdrawal of the suit with liberty to file a fresh suit taking into account the fact that the suit was of 2008, the evidence of the plaintiff was complete, including his cross-examination and allowing withdrawal at such a late stage would certainly cause injustice to the respondents. Further, the application is filed by the petitioner for withdrawal of the suit with liberty to file a fresh suit, blames the incorrect pleading on his earlier Advocate without offering any explanation for the verification and declaration of the plaint done by the petitioner.

5] In the above view, the impugned order dated 18.3.2017 does not call for any interference.

6] Accordingly, the petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)