

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.1795 OF 2015

Prabhavati W/o Pandit Mane ...Petitioner.

Versus

Shobabai W/o Bhagwat Mane. ... Respondent.

...
Mr.N.D.Kendre, advocate for the petitioner.
Mr.M.L.Dharashive, advocate for Respondent.
...

CORAM : S.V.GANGAPURWALA J.

Date : 15.12.2017.

PER COURT :

1. The application filed by the Respondent/plaintiff seeking withdrawal of the suit with liberty to file fresh suit on the same cause of action is allowed.

2. I have heard Mr.Kendre and Mr.Dharashive, learned counsel for respective parties.

3. The withdrawal of the suit can only be allowed in case of a formal defect in the suit because of which the suit may fail or for any such reason, the Court thinks it appropriate. Reading the order passed by the trial Court, below Exh.107, it does not appear that the Court has considered any such reasons as contemplated U/o XXIII of the C.P.C. The Court has to be satisfied about the grounds existing for withdrawal of the suit with liberty to file fresh suit. No reasoning appears in the impugned order.

4 In light of the above, the impugned order is quashed and set aside. The trial Court shall decide the application Exh.107 by giving reasons and considering Order XXIII Rule 1(3) of the C.P.C.

5. The Writ Petition is partly allowed.
No costs.

(S.V.GANGAPURWALA, J.)

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