IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4436 OF 2017
(Nitin Bapurao Patil Vs. Baliram Guruling Palapure and another)

Mr.A.R.Vaidya, learned counsel for the petitioner.

(CORAM : M.S.Sanklecha, J.)

DATE : 13/04/2017

PER COURT :

1. This petition challenges the order dated 30/03/2016 passed by the 2nd Joint Civil Judge,S.D. Auranabad. By the impugned order, the petitioner's application for stay of the Special Civil Suit No.72/2011 pending disposal of the petitioner's Special Leave Petition by the Apex Court in criminal proceedings was rejected.

2. It is pertinent to note that the Trial Court had acquitted the petitioner in the criminal proceedings. However, this Court had reversed the finding of the Trial Court and being aggrieved thereby, the petitioner has filed Special Leave Petition to the Apex Court, which is pending even today.

3. The impugned order dated 30/03/2016 in rejecting the application for stay placed reliance upon Section 10 of the Civil

Procedure Code (CPC) to conclude that it has no power to stay a pending civil suit in view of pending criminal proceedings.

4. Mr.Vaidya, learned counsel appearing for the petitioner very fairly states that admittedly a civil suit cannot be stayed in view of a pending criminal proceeding under Section 10 of the CPC. This is so as Section 10 of the CPC only empowers the court to stay the suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties i.e. both proceedings must be civil proceedings. Therefore, no grievance against the impugned order or the touchstone of Section 10 of the CPC can be made.

5. In the above view, Mr.Vaidya seeks to withdraw this petition and with liberty to make an appropriate application for stay of the civil suit in view of pending criminal proceedings before the Trial Court, if so permissible under the Law. Liberty granted.

6. Petition stands dismissed, as withdrawn. No order as to costs.

(M.S.Sanklecha, J.)