

Anand

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

WRIT PETITION NO.11035 OF 2015

Tukaram Sattappa Powar

.Petitioner

Vs.

Chambabai Shivaji Patil & Ors.

.Respondents

Mr.S.V.Sadavarte, Advocate, for the Petitioner

Mr.A.B.Borkar, Advocate, for the Respondents No.1 to 6

CORAM : R.G.KETKAR, J.

DATE : 10.03.2017

P.C.

. Heard Mr. Sadavarte, learned counsel for the Petitioner and
Mr. Borkar, learned counsel for the Respondents.

2. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Plaintiff' has challenged the Judgment and Order dated 27.08.2014 passed by the learned 12th Jt.C.J.J.D., Kolhapur, below Exh.32 in R.C.S.No.196 of 2013. By that order, the learned trial Judge rejected the Application made by the Plaintiff under Section 151 of the Code of Civil Procedure, 1908 (For short "CPC") for setting aside dismissal order dated 21.10.2013 passed against Defendants No.5 and 6.

3. During the course of hearing of this Petition, it was pointed out to Mr. Sadavarte that in the Application Exh.32, Plaintiff contended that Defendant No.6 is a married daughter of Defendant No.1. Defendant No.6 is not a married daughter but is son of the Defendant No.1. Application Exh.32 made by the Plaintiff proceeded on the footing that Defendants No.5 & 6 are married daughters of Defendant No.1 and are residing at their matrimonial homes. As the very foundation of the Application Exh.32 was that Defendant No.6 is a married daughter of Defendant No.1 is not correct and it is clear that Defendant No.6 is the son of Defendant No.1, Mr. Sadavarte seeks permission to withdraw the Application Exh.32 as also this Writ Petition with liberty to file a fresh Application. He submitted that within two weeks from today, he will file a fresh Application for setting aside the Order dated 21.10.2013.

4. In view thereof, on the motion made by Mr.Sadavarte, Application Exh.32 as also this Petition are allowed to be withdrawn with liberty as prayed for. If the Plaintiff files a fresh Application within two weeks from today for setting aside the Order dated 21.10.2013 qua Defendants No.5 & 6, time spent by the Plaintiff from 21.04.2014 till today shall be excluded while considering the question of condonation of delay. Order accordingly.

(R.G.KETKAR, J.)