

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7936 OF 2016

Mrs. Muktabai Bhaguji Raut ... Petitioner
Vs.
Mrs. Bhamabai Laxman Khilare & Ors. ... Respondents

Mr. P.S. Dani, Senior Advocate i/b. Jui A. Nerurkar for the petitioner.
Mr. Mandar Soman i/b. Mr. P.B. Kulkarni, Advocate for respondent
Nos. 1, 3 to 5.
Mr. Nachiket V. Khaladkar, Advocate for respondent nos. 6 and 7.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **5th June, 2017.**

P.C.:

Rule. Rule made returnable forthwith. By consent, the petition is heard finally and decided at the stage of admission.

2. In this Writ Petition, the order dated 7th April, 2016 passed by the learned Civil Judge Junior Division, Pune is challenged. The petitioner is the original plaintiff no. 1 in Regular Civil Suit No. 456 of 2007, who has filed the suit along with 5 other plaintiffs. The petitioner/plaintiff no. 1 has entered into compromise dated 25th February, 2016 with original defendant nos. 1 and 2, which is also registered document with the office of Registrar, Haveli and has accepted the money. Now she does not want to pursue the said suit

and therefore, moved an application dated 8th March, 2016 to the Court that she be allowed to withdraw from the said suit and, thus, sought permission for amendment to that effect. The learned trial Judge rejected the said Application on the ground that the consent of other plaintiffs was not obtained by plaintiff no. 1. Hence, this Petition.

3. The learned senior counsel for the petitioner has submitted that the application was made by the petitioner/plaintiff no. 1 not for withdrawal of the suit but only for withdrawal of plaintiff no. 1 from the said suit and amendment to that effect was sought. He further submitted that no reasons are mentioned in the impugned order except of not obtaining the consent of other plaintiffs, which is erroneous. Thus, he prays that the order dated 7th April, 2016 be set aside.

4. Though served on respondent no. 2, none present on his behalf. The learned counsel for respondent nos. 6 and 7 supports the case of the petitioner.

5. The learned counsel for respondent nos. 1, 3 to 5 submitted

that it is necessary for the learned Judge to verify whether the interest of other plaintiffs is prejudiced due to this compromise and if such interest is prejudiced, then the trial Court may not allow the withdrawal of plaintiff no.1/petitioner from the suit.

6. On perusal of the order dated 7th April, 2016 and considering the submissions made by the learned counsel for both the sides, the impugned order does not stand on merit and is hereby quashed and set aside. The reason in the said order is incorrect and therefore the Application dated 8th March, 2016 is to be heard by the learned trial Judge afresh and pass a reasoned order.

7. Writ Petition is allowed.

(MRIDULA BHATKAR, J.)