

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

WRIT PETITION NO. 8722 OF 2016

Mr. Surendra Bahadur Udrej
Singh and Ors.

..Petitioners.

Vs

Mira Bhayander Municipal
Corporation.

.. Respondent

Mr. Suhas Oak i/b Mr. Sandeep Mishra, Advocate for Petitioners.
Mr. N.R.Bubna, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 01/02/2017

PC:

1. Not on Board. At the request of Mr. Suhas Oak, taken up for admission. Heard Mr.Suhas Oak, learned counsel for the petitioners and Mr.N.R.Bubna, learned counsel for respondent-Municipal Corporation at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 13.7.2016 passed by the learned District Judge-9, Thane in Misc. Civil Appeal No.162 of 2015. By that order, the learned District Judge allowed the Appeal preferred by the respondent, hereinafter referred to as 'defendant', and quashed and set aside the judgment and order dated 8.7.2015 passed by the learned 5th Jt.Civil Judge, Senior Division, Thane below Exhibit-5 in Special Civil Suit No.24 of 2015. The learned District Judge rejected the application below Exhibit-5 filed by the

petitioners, hereinafter referred to as 'plaintiffs'.

3. After arguing the petition for quite sometime, Mr. Oak, upon taking instructions from the instructing Advocate Mr. Mishra, seeks permission to withdraw Special Civil Suit No. 24 of 2015 with liberty to institute proceedings in accordance with law. He assures that within two weeks from today, he will institute appropriate proceedings. He further states that interim protection given by this Court may be continued for a period of two weeks from today and he assures that he will not seek further extension of the interim order.

4. Mr. Bubna states that in case the petitioner are permitted to withdraw the suit, itself, all contentions of the respondent-corporation including maintainability of such proceedings may be expressly kept open.

5. In view thereof, the petition is disposed of as withdrawn in the following terms:

(i) Plaintiffs are permitted to withdraw the suit instituted by them in the trial Court, with liberty as prayed for, by producing authenticated copy of this order. Upon production of the authenticated copy of this order, the learned trial Judge will permit the plaintiffs to withdraw the suit. Grant of liberty shall not be construed as an expression of merits either way. All contentions of the respondent-Corporation including maintainability of such proceedings are expressly kept open.

(ii) Notwithstanding withdrawal of the petition, interim protection granted by this Court on 15.7.2016 shall remain in force for a period of two weeks from today and shall dissolve automatically thereafter. It is expressly made clear that the petitioners shall not seek further extension of Interim order.

(R.G.KETKAR, J.)