

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

WRIT PETITION NO. 11748 OF 2018

Sakharam Venkati Kanure

...Petitioner

VERSUS

Pundlik Baburao Kanure

...Respondent

Mr. A.N.Sabnis h/f Mr. V.D.Gunale, advocate for Petitioner
Mr. R.B.Deshmukh, advocate for Respondent sole

Coram : N.M. Jamdar, J.

Date : 19 December 2018.

Oral Order :

Heard learned counsel for the parties.

2. The petitioner-defendant has challenged the order, passed by the learned Civil Judge, Junior Division, Udgir, dated 21 April 2018 permitting withdrawal of the suit filed by the respondent-plaintiff with liberty to file the suit afresh.

3. There is hardly any reason given in the application for withdrawal of the suit with liberty to file fresh suit when the suit had substantially advanced. The explanations that the learned counsel for respondent-plaintiff seeks to give now are across the Bar and oral. Having confronted with such an application, the learned counsel for respondent-plaintiff had to concede that there is no reason stated as such, as to what are the technical lacunae referred to in the impugned order. In the impugned order also, the learned Judge only states that there are certain inherent lacunae without elaborating what they are. Therefore, neither the application nor the order states any reason.

4. Learned counsel for the respondent-plaintiff submitted that though the application has not mentioned the reasons, there exists certain inherent lacuna, and therefore, withdrawal with liberty to file fresh suit would be necessary.

5. Learned counsel for the petitioner makes further grievance that when the application was moved, no opportunity was given to the petitioner to contest the same and on the very same date of filing of the application, the order was passed.

6. Considering this position, it would be appropriate that the impugned order is set aside and the respondent-plaintiff is directed to file proper application giving reasons as to why the suit needs to be filed afresh within the ambit of Order XXIII Sub-Rule 3 of the Code of Civil Procedure and opportunity is given to the petitioner to contest the same.

7. Accordingly, following order is passed.

(i) The impugned order, dated 21 April 2018 is quashed and set aside.

(ii) Regular Civil Suit No. 601 of 2017 is restored to file. The respondent-plaintiff will file application, if he chooses to do so, under the above said provision.

(iii) After the application is so filed, the learned Civil Judge will give opportunity to the petitioner to file his say and pass order as per law within a period of six weeks, subject to earlier time bound commitment.

8. Writ Petition is accordingly disposed of.

N.M.Jamdar, J.