

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

WRIT PETITION NO. 10637 OF 2018

ANUL DNYANDEV NAALE THROUGH GUARDIAN KARBHARI BARKU
NAALE
VERSUS
RAHUL BHAUSAHEB WANDEKAR AND OTHERS

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Advocate for the Petitioner : Shri Shirsath P.B..
Advocate for Respondent 1 : Shri Temkar Rajendra K..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th September, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 23.03.2018 passed by the Trial Court rejecting the application Exhibit 34 filed by the Petitioner/ original Defendant No.1 in RCS No.789/2014, thereby, refusing to reject the plaint in view of Order 7 Rule 11(a) and (d) of the Code of Civil Procedure.

2 The learned Advocate for the Petitioner, while assailing the impugned order, has specifically contended before me that an earlier suit bearing RCS No.10/2007 was also filed by the same Plaintiff in RCS No.789/2014, the same was compromised and withdrawn and hence, the second suit bearing RCS No.789/2014 is covered by Order 23 Rule 3-A of the Code of Civil Procedure. While canvassing before me, it was

specifically stated that Order 23 Rule 3-A would bar the filing of the suit when there is a compromise decree.

3 I find in this case that the Plaintiffs are not identical insofar as RCS No.10/2007 and RCS No.789/2014 are concerned, inasmuch as, there was no compromise decree even in the 2007 suit and the said suit had been simplicitor withdrawn without giving liberty to that Plaintiff to file a fresh suit. As the Plaintiffs are totally different and since there was no compromise decree in the earlier suit, I find that the Petitioner has attempted to misdirect the court.

4 In view of the above, the impugned order refusing to cause an interference after taking into account the above factors, would not amount to a perverse or an erroneous order. This Writ Petition is dismissed by imposing costs of Rs.5000/- (Rupees Five Thousand), which the Petitioner shall deposit in the Trial Court on or before 12.10.2018 and Respondent No.1 appearing in this matter is permitted to withdraw the said amount. Failure to deposit the above amount, would grant liberty to the Trial Court to initiate appropriate steps against the Petitioner for recovery of the said amount or for striking off his defence.