

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

WRIT PETITION NO. 10636 OF 2018

KARBHARI BARKU NAVALE
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..

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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 28 filed by the Petitioner/ original Defendant No.1 in RCS No.744/2014, thereby, refusing to reject the plaint in view of Order 7 Rule 11(a) and (d) of the Code of Civil Procedure.

2 The Petitioner contends that Order 7 Rule 11 and Order 23 Rule 3-A of the Code of Civil Procedure are involved in this matter as an earlier suit bearing RCS No.16/2007 has been withdrawn by the Plaintiff on 23.05.2007 and yet, the Plaintiff has filed the fresh RCS No.744/2014. Reliance is placed upon the judgment of this Court in the matter of *Sushil s/o Sohanlal Agrawal Vs. Harishankar Ramnivas Sharma and another*, 2016 (4) Mh.L.J. 904.

3 After hearing the learned Advocate for the Petitioner and

upon going through the petition paper book and the impugned order, I called upon the Petitioner to state whether, the Plaintiff, who has filed RCS No.744/2014 is the same plaintiff who withdrew RCS No.16/2007. The learned Advocate for the Petitioner attempted to canvass before this Court that the same Plaintiff had withdrawn the earlier suit of 2007 and took this Court through Order 23 Rule 1 of the Code of Civil Procedure and also through the judgment in *Sushil Agrawal (supra)*.

4 Apparently, I find that the Petitioner seeks to mislead this Court in view of the fact that the Plaintiff in the 2014 suit was not the Plaintiff in the 2007 suit. The Plaintiff in the 2014 suit had never moved an application in the 2007 suit in his capacity of being a plaintiff as he was a minor then and was never the Plaintiff in the earlier suit of 2007.

5 Considering the above, I find this writ petition to be vexatious and hence, the same 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 steps against the Petitioner for recovery of the said amount or strike off his defence.