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

WRIT PETITION NO.10792 OF 2017.

Vikas Bhujangrao Thorat ... Petitioner.

V/s.

State of Maharashtra
Through Collector, Sangli ... Respondents

Mr. Pratap Patil, for the Petitioner.
Mr. A. R. Metkari, AGP, for the Respondents.
Mr. Nikhil Pawar, for respondent Nos. 3 to 8.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st MARCH, 2018.

P.C. :

1] Heard learned counsel for petitioner, learned counsel for respondent Nos. 3 to 8 and learned AGP for the State.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 16.6.2017, passed below Exh.99, by Civil Judge, Senior Division, Islampur, in R.C.S.No.389 of 2011.

3] Application at Exh.99 has been filed by the petitioner before the trial Court seeking amendment in the written statement to the counter claim of the respondent, for addition of several contents

and contentions. The petitioner is original plaintiff in the suit. Admittedly, he has withdrawn the said suit and hence suit stands disposed off. Thereafter the counter claim of respondent is alone proceeded. Now the petitioner wants to file additional written statement by way of amendment under Order VI Rule 17 CPC

4] However, as rightly observed by the trial Court, after withdrawal of the suit, the petitioner has given up his right to sue and in such situation, he cannot raise the contentions which he has raised in the plaint, by way of amendment in the written statement to the counter claim. Moreover, the trial Court has given elaborate reasons as to why the proposed amendment in the form of additional Written Statement to the Counter claim cannot be entertained, as by way of such amendment, the petitioner is filing as good as new suit against respondents giving fresh description of the suit property.

5] Moreover, the petitioner's father has filed separate suit R.C.S.No.275 of 2016, in respect of this very cause of action and it is pending .

6] The hearing of the present suit has already commenced, Defendant No.3 and his one witness have been examined. No sufficient reason is given as to why amendment was not sought earlier. Therefore, in view of Proviso to Order VI Rule 17 of Code of Civil Procedure, the trial Court has rightly rejected the said

application.

7] In writ jurisdiction no interference is warranted in the impugned order. The writ petition, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]