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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 94 OF 2016**

M/s. D. K. Construction Through itsPetitioner
proprietor Mr. Keshav Kathiria

V/s.

M/s. Statomat Special Machine (I)Respondent
Pvt. Ltd.

Mr. Mahesh Vishwakarma for the petitioner.
Mr. Kishor V. Tembe for respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 27th JUNE, 2018.

P.C.

Pursuant to provisions of Order XXIII of the Code of Civil Procedure in R.C.S. no. 38 of 2014, plaintiff has taken out an application for withdrawal of the suit with following wordings.

“Therefore in view of above the Plaintiff be allowed to withdraw the present Suit (unconditionally) with liberty to file the same in appropriate Court or any other and further such relief in the interest of justice, equity and law”.

2 The said application Exhibit 21 came to be allowed by impugned order dated 30/11/2014. The only challenge raised by the learned counsel for the petitioner plaintiff is that he should have been granted liberty as prayed for in Exhibit 21 and should not have permitted the withdrawal of the suit unconditionally.

3 *Per contra* the learned counsel for the respondent would urge that in the typed copy of Exhibit 21 hand written word 'unconditionally' is inserted in para 2 and as such, the Court rightly passed the order and permitted the withdrawal of the suit unconditionally.

4 Considered rival submissions.

5 In the wake of provisions of Order XXIII Rule 1 (3) what is expected of the learned Trial Court while dealing with the plea for withdrawal of the suit when the same is sought to be withdrawn with condition or otherwise is to record findings whether the suit is permitted/disposed of as withdrawn unconditionally or

conditionally. If the learned Trial Court is not inclined to grant leave to withdraw the suit unconditionally, it was expected of to record reasons thereof which are conspicuously absent in the impugned order. In view thereof, the impugned order dated 13/11/2014 passed below Exhibit 21 is set aside and the learned Court of Civil Judge Junior Division Vashi, dealing R.C.S. No. 38 of 2014 is directed to decide application Exhibit 21 in accordance with scheme of Order XXIII Rule 1 (3) of the Code of Civil Procedure.

6 With above observations, petition stands partly allowed.

7 Parties agree before this Court that they shall appear before the said Court of Civil Judge Junior Division, Nashik on 31/07/2018. As such, fresh suit summons to the respective parties is dispensed with.

[NITIN W. SAMBRE, J.]