

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13235 OF 2018

Larry Menezes and Others	...Petitioners
vs.	
Bandra Sunbeam CHSL	...Respondent

Mr. Jaydeep Deo, for the Petitioners.

CORAM : M. S. SONAK, J.

DATE : NOVEMBER 27, 2018

P.C.:

. Mr. Jaydeep Deo, learned counsel for the Petitioners on the basis of instruction from the Petitioners, seeks leave to withdraw this Petition with liberty to challenge the impugned order dated 12th October, 2018 in T.E. Suit No.32/42/2013, which is ultimately decided against the Petitioners and the Petitioners appealed against such decision. The request is made in terms of the provision in Section 105 of the Code of Civil Procedure. The request made by the learned counsel for the Petitioners is reasonable and is required to be acceded. Accordingly, this Petition is disposed of as withdrawn with liberty as prayed for.

2. Though the Petitioners are granted leave to withdraw this Petition and the Petition is disposed of on the said basis, it is

necessary to note that the learned trial Judge was not justified in expounding proposition that commencement of trial does not mean mere filing of evidence but also includes the submission of final argument. (see para 55 and 56 of the impugned order).

3. Such proposition appears to be contrary to what was laid down by the Hon'ble Apex Court in ***Vidyabai and Others vs. Padmalatha and Another, (2009) 2 Supreme Court Cases 409.***

In para 11, the Hon'ble Apex Court has observed that filing of an affidavit in lieu of examination in chief of the witness, would amount to “commencement of proceeding” in the context of the proviso the order 6 Rule 17 of C.P.C.

4. Taking into consideration that the eviction Petition is pending since 2013 and the cross examination of P.W. 1 is in progress since last 2 years. The learned trial Judge is directed to dispose of T.E. Suit No.32/42/2013 expeditiously.

(M. S. SONAK, J.)