

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL SUIT NO.87 OF 2017
WITH
COMMERCIAL CHAMBER SUMMONS NO.30 OF 2017
WITH
COMMERCIAL NOTICE OF MOTION NO.572 OF 2017
IN
COMMERCIAL SUIT NO.87 OF 2017**

M/s. Dhanlaxmi EnterprisesPlaintiff

Vs.

Yashwanti Jaisinghrao Suryavanshi & Anr.Defendants

**WITH
COUNTER CLAIM NO.11 OF 2017**

Mr. Ajay Panicker a/w. Mr. Amit Kakri I/b. Ajay Law Associates for plaintiff/applicant in CHSCD/30/2017.

Mr. Piyush Raheja a/w. Mr. Hemang R. I/b. RMG Law Associates for defendants/plaintiffs in counter claim/applicant in NMCD/572/2017.

CORAM : K.R.SHRIRAM, J.

DATE : 29th NOVEMBER 2018

P.C.:

1 Mr. Panicker states that the application to register plaintiff with the Registrar of Partnership Firms was made in 2011 and registered only in 6th July 2017 before which the suit came to be filed. Mr. Panicker, therefore, seeks leave to withdraw the suit with liberty to file fresh suit.

2 Mr. Raheja opposes the liberty because according to Mr. Raheja this fact was brought to light in the notice of motion that was taken out by defendants and defendants have filed a counter claim.

3 In my view, no prejudice will be caused to defendants if I grant the liberty as prayed for because defendants will be able to raise all defences on merit in the new suit that will be filed. At this stage, Mr. Raheja presses for costs and also states that the Court should award cost against plaintiff and the counter claim by defendants should be converted as suit. Mr. Raheja is not unjustified in making this request.

4 Suit dismissed as withdrawn with the liberty as prayed for. Refund, if any, of court fees in accordance with rules. Chamber summons as well as notice of motion accordingly stand disposed.

5 Plaintiff to pay a sum of Rs.25,000/- as costs to defendants by way of cheque drawn in favour of the advocate on record for defendants within two weeks from today. The counter claim of defendants being counter claim no.11 of 2017 be converted as a suit.

6 Mr. Panicker on behalf of plaintiff who is defendant to the counter claim waives service of the writ of summons since the counter claim has already been served upon his clients and written statement is already filed. Mr. Raheja states that within three weeks all requirements to convert the counter claim into a suit will be made with the registry.

7 By consent, the protection as recorded in the order dated 20th January 2017 to both the parties to continue. This order protecting plaintiff will come to an end on 31st December 2018 unless plaintiff files a

fresh suit and serves a copy thereof upon defendants/plaintiffs to the counter claim. In the new suit that plaintiff proposes to file, plaintiff may bring on record all facts as on date of lodging of the suit.

8 Stand over to 4th January 2019 for directions.

(K.R. SHRIRAM, J.)