

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

4 WRIT PETITION NO.385 OF 2019

SALEEMABE MILAL SHAIKH
VERSUS
MADEENABEE BASHIR KHOJE (SHAIKH) AND OTHER

...
Advocate for Petitioner : Mr. R. P. Adgaonkar
Advocate for Respondent Nos.2 to 5 : Mr. G. L. Deshpande
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 14th OCTOBER, 2019.

...

PER COURT :

1. This matter was heard at length on 11.10.2019 and again today.

2. I have considered the strenuous submissions of the petitioner, who is the original plaintiff. He is aggrieved by the impugned order dated 17.11.2018, by which the trial Court has rejected application Exhibit-81 filed by him seeking leave to withdraw RCS No. 173 of 2013 and file a fresh suit.

3. Considering the order that I intend to pass, I am not required to advert to the entire submissions of the

litigating sides. Suffice it to say that after the entire oral evidence was recorded in the suit, the plaintiff who belongs to the Mohammedan religion and is a lady litigant, consulted another advocate and the other advocate advised her to withdraw the suit and file a fresh suit.

4. I find from the impugned order that the trial Court has noticed that there are no such circumstances by which the ingredients under Order 23 Rule-1(2) and (3) of the Code of Civil Procedure can be said to have been satisfied for permitting the withdrawal of the plaint.

5. The learned advocate for the defendants submits that the impugned order indicates that though there are no sufficient grounds for withdrawal of the suit with liberty to prefer a fresh suit, the trial Court has made an observation that if there are any formal defects or circumstances by which an amendment could be sought, the said option could be available to the plaintiff.

6. Considering the above, this petition is disposed off.

7. In the event, the petitioner moves the trial Court with an application for amendment, on or before 11.11.2019, the trial Court would consider the said application, after hearing all the parties, on its own merits and without being influenced by any observations made by this Court in this order.

(RAVINDRA V. GHUGE, J.)

vsm/-