

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.901 OF 2018

Sindhubai Namdeo Vhatkar and Ors. ...Petitioners
vs.
Mahalaxmi Sahakari Co.Op. Credit Society
Limited, Kolhapur ...Respondent

Mr. Kishor Patil I/b. Mr. A.P. Mhatre, for the Petitioners
Mr. A.B. Borkar, for the Respondent.

CORAM : M. S. SONAK, J.

DATE : APRIL 16, 2019

P.C.:

. Heard Mr. Kishor Patil, learned counsel for the
Petitioners and Mr. Borkar, learned counsel for the Respondent.

2. The challenge in this Petition is to the order dated 14th
August, 2017 made by the learned trial Judge dismissing the
Petitioners' application (Exhibit 81) seeking dismissal of the R.C.S.
No. 487 of 2011 on the ground that initially the Respondent –
Plaintiff had instituted R.C.S. No. 714 of 1996 on the basis of the
same cause of action and on the same ground the suit was
withdrawn without liberty to institute a fresh suit. The Petitioners
who are the original Defendant Nos. 1 to 12 in RCS No. 487 of
2011 had therefore urged that the suit was not maintainable
taking into consideration the provision under Order 23 Rule 1(3) of

Code of Civil Procedure (CPC).

3. Mr. Kishor Patil submits that since the previous suit was based upon the same cause of action and the same ground, the unconditional withdrawal of the previous suit bars the present suit having regard to the provision to Order 23 Rule 1(3) of CPC. He submits that merely on account of clever drafting the second suit is made appear different. He however submits that some and substance is that there is no difference between earlier withdrawal suit and the present suit. Therefore the impugned order warrants interference.

4. Mr. Borkar submits that the cause of action in instituting the two suits is different and the relevant claim in the two suits were entirely different. He therefore submits that there is no error in the view taken by the learned trial Judge.

5. In the first place, the Respondent-Plaintiff who had instituted RCS No. 714 of 1996 by application (Exhibit 241) had applied for withdrawal of the Civil Suit with liberty to institute a fresh suit. The learned trial Judge by order dated 26th September, 2007 however, granted leave to withdraw the suit without liberty to institute the fresh suit. This difference was not proper. Either, the learned trial Judge should have permitted the Respondent to

withdraw the Civil Suit with liberty as prayed for or dismissed the application seeking leave to withdraw the suit. As such on the basis of order dated 26th September, 2007, the Petitioner cannot object to the progress in RCS No. 487 of 2011.

6. That apart, the learned trial Judge has observed that the cause of action in the two suits was different and even the relief claimed for, were quite different. Taking into consideration, this aspect as well, it cannot be said that there is any jurisdictional error, in the view taken in the impugned order.

7. Accordingly, this Petition is dismissed.

8. Since RCS No. 487 of 2011 pertains to the year 2011, the learned trial Judge is directed to dispose of the suit as expeditiously as possible and in any case by 31st May, 2020.

(M. S. SONAK, J.)