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3 Learned counsel for the petitioner submits that the petitioner filed an application (Exhibit 49) in Special Civil Suit No. 590/2014, in view of the admission made by the defendant Nos. 1, 3 and 6 in their written statement, the observations made in the order dated 20th September 2016 passed by the 11th Joint Civil Judge, Senior Division, Thane, as well as the order passed by this Court on 4th April, 2017 in Appeal from Order No. 144/2017. He submits that the petitioner be permitted to withdraw the said amount of Rupees One Crore, without prejudice to his rights and contentions in the Suit.

4 Learned counsel for the contesting respondent Nos. 1, 3 and 6 opposes the petition. She submits that the respondent Nos. 1, 3 and 6 had not admitted their liability in the written statement. She states that infact the said respondents have filed an application in the Court of Civil Judge, Senior Division, Thane, seeking to amend the written statement. She submits that the reference in the written statement that the petitioner's share is Rupees One Crore is an inadvertent mistake. She, therefore, submits that no interference is warranted in the impugned order dated 14th December 2018 passed by the learned Joint Civil Judge, Senior Division, Thane.

5 Perused the papers. The petitioner is the original plaintiff, who has filed Special Civil Suit No. 590/2014 in the Court of the Joint Civil Judge, Senior Division, Thane. In the said Special Civil Suit, the respondent (defendant) appeared and filed their written statement. In the written statement filed by the respondent Nos. 1, 3 and 6, in particular, paragraph 66 of the said written statement, it is stated as under :

“66. These Defendants state that, the accounts of the Partnership were settled to the satisfaction of Shekhar Shinde and Shailesh Shinde and it was found that, Plaintiff Pravin Vora H.U.F. was entitled for Rs. 1,00,00,000/- each towards their share and interest in the said business including goodwill together with all benefits and stock in trade, monies, credits and effects sold and unsold flats, properties, land and plot of land, etc. belonging to said Partnership Firm.”

The said written statement is annexed to the petition at Exhibit B, at page 24. It appears that the petitioner, thereafter, filed an application (Exhibit 5) seeking injunction against the defendants (respondents) for restraining them from disposing of the partnership property. The said Exhibit 5 application was rejected by the learned 11th Joint Civil Judge, Senior Division, Thane, vide order dated 20th September 2016. In the said order, by which, the injunction was refused, the learned Judge observed in paragraphs 15 and 16 as under :

“15. As noted earlier, after the alleged retirement of the plaintiff, three more partners got themselves rescued and got the accounts settled and got their respective dues. Initially, the plaintiff on settlement of account was held to be entitled to the share of Rs. 20,32,682/- lacs, however, in paragraph no. 66 of the written statement filed on behalf of defendants no. 1, 2, 3 and 6, the plaintiff was found entitled to Rs. 1 Crore. It is observed in the said paragraph that the accounts of the partnership were settled to the satisfaction of Shailesh Shinde and Shekhar Shinde defendant no. 4 and 5 respectively and it was found that plaintiff, Pravin Vora HUF was entitled to Rs. 1 Crore.”

“16. However, the defendant no. 1, 2, 3 and 6 have conceded in paragraph no. 66 vis-a-vis entitlement of the plaintiff to the tune of Rs. 1 Crore qua his share.”

Accordingly, the learned Judge passed the following operative order which is on page 64 of the petition, which reads as under :

“ORDER

1 Defendants no. 1,2,3 and 6 are directed to deposit Rs. 1 crore, the entitlement of the plaintiff admitted by defendants aforementioned vis-a-vis plaintiff's dues after accounts being allegedly settled by the aforesaid defendants on account of the plaintiff's alleged retirement from the partnership firm, within a period of one month from today.

2 On such deposit, the plaintiff to value the suit assuming the amount of Rs. 1 crore as the base figure against his entitlement valuation and carry out necessary amendment subject to an without abrogating his rights in respect of his entitlement to his share in the partnership firm, if any which he assumes, and to pay the requisite court fees against such valuation within a period of 15 days thereafter. Needless to

say that the deficit court fees is recoverable in the event the plaintiff succeeds in establishing his stake higher than the base figure.

3 After due compliance of all the directions on behalf of either of the parties, in the event the plaintiff comes with a plea of withdrawal of the entitled sum as divulged by the contesting defendants, the same shall be attended to in accordance with the merits involved in it and after due consideration of the pros and cons of the plea.

4 The rest of the prayers are declined. The applications Exh 5, 28 and 34 are disposed of as aforesaid.

5 Costs to follow the event.”

6 Being aggrieved by the said order dated 20th September 2016 passed by the learned 11th Joint Civil Judge, Senior Division, Thane, the petitioner filed an Appeal from Order No. 144/2017 along with Civil Application No. 188/2017, in this Court. This Court vide order dated 4th April 2017 was pleased to dismiss the said appeal from order. This Court, whilst dismissing the said appeal from order observed in para 8 as under :

“8 In the impugned order, the Trial Court has observed that the Defendant Nos. 1 to 3 and 6 have conceded the share of the Appellant/original Plaintiff to the tune of Rs. 1 crore. The Court is informed that the amount is accordingly deposited by the Respondent Nos. 1 to 5 in the trial Court. The trial Court has left it open for the Appellant to apply for withdrawal of the amount deposited, after depositing the requisite Court fees. In these circumstances, in my view, no case for interference with the

impugned order is made out by the Appellant.
”

7 The petitioner, thereafter, did not challenge the said order before the Apex Court and instead filed an application (Exhibit 49) on 13th October 2017, before the learned Civil Judge, Senior Division, Thane, and prayed for withdrawal of the amount of Rupees One Crore deposited by the defendant Nos. 1, 3 and 6 in the trial Court, in compliance with the directions issued by the trial Court vide order dated 20th September 2016 passed below Exhibit 5. At this stage, when the said application for withdrawal was filed, the respondent Nos. 1, 3 and 6 resisted the said application and for the first time, stated that it was wrongly mentioned in the written statement that the petitioner was entitled to Rupees One Crore and that it was an inadvertent mistake made by them in the said written statement. Pursuant thereto, the respondent Nos. 1, 3 and 6 filed an application and sought amendment of their written statement on 23rd February 2018, which is pending before the learned Joint Civil Judge, Senior Division, Thane.

8 As noted above, for the first time, the respondent Nos. 1, 3 and 6 raised a grievance with regard to incorrect mentioning of Rupees One Core as the admitted amount, to be paid to the petitioner. Admittedly, the

order dated 20th September 2016, which according to the respondent Nos. 1, 3 and 6 incorrectly mentions the admitted entitlement of the petitioner has not been challenged nor any clarification has been sought from the said Court.

9 Be that as it may, *prima facie*, considering para 66 of the written statement as well as the direction in the order dated 20th September 2016 and the observations made by this Court in its order dated 4th April 2017, it would be appropriate to direct the trial Court to permit the petitioner to withdraw Rupees One Crore deposited by the respondents in the trial Court, subject to certain terms and conditions. Accordingly, the following order is passed :

ORDER

- (i) Petition is allowed;
- (ii) The judgment and order dated 14th December 2018 passed by the learned 7th Joint Civil Judge, Senior Division, Thane, below Exhibit 49 in Special Civil Suit No. 590/2014, is quashed and set-aside;
- (iii) The petitioner is permitted to withdraw Rupees One Crore deposited by the defendants in the trial Court, pursuant to the order

dated 20th September 2016, on furnishing bank guarantee of Rupees One Crore of a Nationalized Bank;

(iv) The petitioner is permitted to withdraw the said amount, without prejudice to the rights and contentions of both the parties. In the event, the suit is decided against the petitioner, the petitioner to bring back the said amount along with interest thereon;

(v) The learned Special Judge to decide the application filed by the defendants for amendment, on its own merits, uninfluenced by the order passed herein;

(vi) All contentions of all the parties are kept open.

10 Petition disposed of in the aforesaid terms.

11 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.