

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE**

**FIRST APPEAL ST. NO.24831 OF 2019
WITH
CIVIL APPLICATION ST. NO.24832 OF 2019**

Gulab Krishna Gilbile

... Appellant

Vs

Pralhad Krishna Gilbile & Ors.

... Respondents

Mr.Madhav Jamdar i/b Mr.R.P. Surve for the Appellant

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: SEPTEMBER 27, 2019

P.C.:

1. The appellant - original plaintiff has challenged the order dated 10.6.2019 passed by the learned Joint Civil Judge, Senior Division, Pune by which, by accepting the application of defendant No.6, the learned Judge rejected the plaint in exercise of powers under Order 7 Rule 11 of Code of Civil Procedure. The learned Counsel for the appellant submitted that the order needs to be set aside on various legal grounds. Additionally, he pointed out that the same was also passed in breach of principles of natural justice. In this context, he pointed out that the order records that

arguments of both sides were heard. Taking us through the Roznama, the Counsel pointed out that on 22.3.2019, the proceedings were fixed on 10.6.2019 for hearing of exhibit 33. The Roznama of 10.6.2019 shows that the advocates of both sides are absent. On the basis of such material, the Counsel submitted that the entire order was passed without hearing the arguments of the advocates and the recording in the order that the advocates were heard, is not accurate.

2. If that be so, at first instance, it would be better for the appellant to approach the same Court for recall of the order.

3. In view of these observations, the Counsel for the appellant sought permission to withdraw the appeal in order to apply before the Court below, keeping all legal contentions open. Permission as prayed for granted. If such an application is filed within a period of two weeks from today, we are sure that the learned Judge would consider it on merits.

4. The Appeal is accordingly disposed of as withdrawn. Court fees may be refunded as per rules.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)