

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12890 OF 2018

Mr.Nitinkumar Chhotubhai Swaminarayn ...Petitioner

Versus

Unknown Heirs and LR's of Late Eulalia ...Respondents
Vijayka & ors.

None for the petitioner.

Mr.Pratik Khandadiya, in-person, son & constituted Attorney of
respondent no.3 -Mrs.Niranjana Khandadiya.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 18th JUNE 2019.

P.C. :

1. None appears for the petitioner. The respondent, who is appearing in-person, informs the Court that this Court has already dismissed the writ petition as withdrawn, and he does not know how the matter was listed once again.

2. First, on the previous occasion, too, there was no representation for the petitioner. For that reason, on 11th June 2019, I directed the Registry to place the matter today under the caption “dismissal”. That is how it has been listed today. As the respondent in-person insisted

that the matter has already been dismissed as withdrawn, I have perused the Court's order, dated 14th March 2019. In deed, the respondent is right.

3. On 14th March, 2019, this Court has recorded as follows:

“ Heard Mr. Thakker, learned Counsel for the petitioner and Mr.Khandadiya, son and Constituted Attorney of the respondent No.3 in person at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 04.05.2018 passed by the learned trial Judge below exhibit-59 in R.A.E.Suit No.565/839/2009. By that order, the learned trial Judge allowed application exhibit-59 filed by the respondent No.3 herein and directed the plaintiff to implead her as party defendant No.1 in place of unknown heir and legal representative of the deceased tenant.

3. It has come on record that in pursuance of the order dated 30.06.2010 passed by the learned trial Judge below exhibit-20, respondent No.3 has filed written statement. Mr. Pratik Khandadiya, son as also the Constituted Attorney of the respondent No.3 states that respondent No.3 does not want to file any written statement in pursuance of the impugned order as the written statement

is already filed in pursuance of the order dated 30.06.2010 passed by the learned trial Judge below exhibit-20. Statement made by Mr. Khandadiya is recorded.

4. After arguing the Petition for quite some time, Mr. Thakker, on instructions, seeks permission to withdraw the Petition.

5. In view thereof on the motion made by Mr. Thakker, Petition is allowed to be withdrawn and is dismissed as withdrawn. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.”

4. Under these circumstances, I hold that the Writ Petition has already been dismissed, and it perhaps by oversight got listed again. No further orders need to be passed in this matter.

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[DAMA SESHADRI NAIDU, J.]