

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14337 OF 2018**

M/s. Jawahar Co-operative Industrial

Estate Limited

.. Petitioner

Versus

Mr. Suresh Laxman Rajpure

.. Respondent

Ms. Jaymala Raut for petitioner.

Mr. Ruchir Dholakia for respondent.

CORAM : K.K. TATED, J.

DATE : 25 FEBRUARY 2019.

P.C:-

. Heard learned Counsel for parties.

2. By this writ petition under Article 227 of the Constitution of India, petitioner/original defendant is challenging the order dated 31.07.2018 passed by Joint Civil Judge, Junior Division, Panvel below Exhibit-12 rejecting petitioner/original defendant's application under Order VII Rule 11 of Code of Civil Procedure, 1908.

3. During the course of argument, the learned Counsel appearing on behalf of respondent/original plaintiff submits that he received instructions from her client to withdraw the Regular Civil Suit No.180 of 2018 itself with liberty to file a fresh suit for the same cause of action. To that effect, advocate for respondent/original plaintiff filed affidavit-cum-undertaking dated

25.02.2019. Same is taken on record and marked 'X' for identification.

4. Learned Counsel appearing on behalf of petitioner submits that they have no objection if the petitioner is permitted to withdraw the Regular Civil Suit No.180 of 2018 and file a fresh suit for same cause of action. She submits that all contentions of both the parties be kept open. Hence, following order is passed :

- a) Writ petition stands dismissed as infructuous.
- b) Suit filed by respondent/original plaintiff bearing Regular Civil Suit No.180 of 2018 before the learned Civil Judge, Junior Division, Panvel stands dismissed as withdrawn with liberty to file a fresh suit for same cause of action.
- c) Respondent/original plaintiff to intimate the trial Court within one month from today about this order.
- d) All contentions of both the parties are kept open.
- e) No order as to costs.

(K.K. TATED, J.)