

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.417/2019

Pushpa Pandurang Dagwar

..Vs..

Deepak Vithoba Dagwar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Abhijit Deshpande, Advocate for the petitioner.
Shri B.M. Dhruv, Advocate for the respondent.

CORAM : Z.A. HAQ, J.

DATE : 5.3.2019.

Heard.

The defendant has challenged the order passed by the trial Court by which the application (Exh. No.39) filed by her seeking permission to amend the written statement and incorporate the counter claim, is dismissed. Before this Court, the defendant has filed Pursis Stamp No.3266/2019 seeking permission to withdraw the application (Exh. No.39) which was filed by her before the trial Court, with liberty to file substantive civil suit for the reliefs prayed for in the counter claim.

Learned Advocate for the respondent / plaintiff has submitted that though the plaintiff is not having objection for withdrawal of the application (Exh. No.39), liberty to file the civil suit cannot be granted to the defendant on the basis of pursis, and if such liberty is to be sought, the defendant should file proper application under Order 23 Rule 1 of the Code of Civil

Procedure before the trial Court.

Considering the facts of the case, I am not inclined to accept the technical objection raised on behalf of the respondent / plaintiff. By the impugned order there is no adjudication of any substantive right of the parties and, therefore, if permission is granted to the defendant to withdraw the application (Exh. No.39) and liberty is granted to file the civil suit, it cannot be said that the plaintiff will be put to any prejudice.

Hence, the following order:

The petitioner / defendant is permitted to withdraw the application (Exh. No.39) filed by her before the trial Court. Consequently, the impugned order does not survive and loses its efficacy. The petitioner / defendant is granted liberty to file substantive civil suit, if so advised, as stated in the pursis.

The writ petition is **disposed** in the above terms. No costs.

JUDGE