

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

WRIT PETITION NO.3904 OF 2019

(MOHAMMED NAZIR @ NAZIRUDDIN AMARUDDIN TIGALA..VS.. RUSTAM ALI HAJI SADARUDDIN
TIGALA THR. LRS & OTH.)

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

Court's or Judge's orders

Shri A.M.Quazi, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : JUNE 12, 2019.

Heard.

The original defendant No.1 has challenged the order passed by the trial Court permitting the plaintiff to withdraw the civil suit with liberty to file fresh civil suit. The defendant No.1, who claims to be the licensee, takes exception to the impugned order urging that the trial Court should not have granted liberty to file fresh suit. According to the petitioner/ defendant, the plaintiff failed to prosecute the matter diligently and after the matter continued to pend for five years, the plaintiff filed application seeking permission to withdraw the civil suit. It is argued that the impugned order is unsustainable as it is not in consonance with the provisions of Order XXIII Rule 1 of the Code of Civil Procedure.

The learned trial Judge has examined the facts and recorded the conclusions in paragraph Nos. 3 and 4 of the impugned order. I find that the learned trial Judge has adverted to all the relevant aspects and has rightly permitted the plaintiff to withdraw the civil suit, granting liberty to file

fresh suit. The learned trial Judge has consciously examined the point of prejudice also and has directed the plaintiff to pay costs to the defendant.

I find that the impugned order is just and proper and does not suffer from any illegality or error of jurisdiction necessitating interference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. No costs.

JUDGE

RRaut..