

Anand

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

WRIT PETITION NO. 4012 OF 2019

Pushpa Navin Delwadia

.Petitioner

Vs.

Ranjana Dharmaraj Chinchavale & ors.

.Respondents

Mr. T. S. Bhide, Advocate, for the Petitioner

Mr. R. Patil a/w Mr. P. G. Sawant, Advocate, for the Respondents

CORAM : REVATI MOHITE DERE, J.

DATE : 11.02.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 14.12.2018 passed by the learned Judge, City Civil Court, Greater Mumbai, by which the Respondents' Notice of Motion seeking leave to file their counter claim was allowed.

3. Learned counsel for the Petitioner submits that having regard to the valuation of the flat in question, the counter claim filed by the Respondents (Original Defendants) was not maintainable before the Court and as such, the same ought to have been filed as a substantive suit before the High Court.

4. Learned counsel for the Respondents (Original Defendants)

submits that during the pendency of this Petition, the Respondents (Original Defendants) have paid Court fees on the flat in question which is over Rs. 1,17,98,000/- and odd. In view of the subsequent development i. e. payment of Court fees on the suit flat valued at Rs. 1,17,98,000/- and odd, learned counsel for the Petitioner does not press this Petition and seeks leave to withdraw the aforesaid Petition with liberty to file an appropriate Application before the trial Court for rejecting the counter claim on the basis of the valuation that has come on record and for transfer of the said counter claim before the appropriate Court.

5. Considering the aforesaid, the Petitioner is permitted to withdraw the Petition with liberty as prayed. If an Application is filed by the Petitioner as set out hereinabove, the learned Judge to consider the same on its own merits uninfluenced by the impugned order dated 14.12.2018 passed by the learned Judge, City Civil Court, Greater Mumbai. All contentions of all parties are kept open.

6. Accordingly, the Petition is disposed of as withdrawn. All contentions of all parties are kept open.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)