

Anand

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

WRIT PETITION 9904 OF 2017

Anita Dilip Gatale .Petitioner

Vs.

Madhukar Ramchandra Jadhav & anr. .Respondents

**WITH
WRIT PETITION 4828 OF 2017**

Anita Dilip Gadale .Petitioner

Vs.

Shashikant Ananda Gadale & ors. .Respondents

Mr. Kalpesh U. Patil, Advocate, for the Petitioner
Mr. Yogesh Patil, Advocate, for the Respondent 2

CORAM : ROHIT B. DEO, J.

DATE : 18.07.2022

P. C.

. In both the Petitions, the Petitioner-Plaintiff preferred an Application for permission to withdraw the Civil Suits unconditionally.

2. By order impugned, the learned trial Judge has rejected the request for unconditional withdrawal.

3. The reason recorded by the learned trial Judge is that the Defendant in the said Civil Suits has filed R.C.S. 242 of 2012 and an order is passed in that Civil Suit clubbing R.C.S. 243 of 2012 and R.C.S. 242 of 2012 and a further order was made that the parties should lead evidence in R.C.S. 243 of 2012 which shall be read in R.C.S. 242 of 2012. It appears that R.C.S. 108 of 2012 is stayed vide a separate order dated 21.02.2013.

4. In sum and substance, the learned trial Judge reasons that in view of the fact that the evidence is to be recorded in R.C.S. 243 of 2012 which is to be read in R.C.S. 242 of 2012, permission to withdraw R.C.S. 243 of 2012 cannot be granted.

5. I need not delve deeper, since the learned counsel for the Respondents – Defendants in R.C.S. 108 of 2012 and R.C.S. 243 of 2012 has a limited apprehension, which is that if the aforesaid suits are withdrawn, then the evidence recorded in R.C.S. 243 of 2012 may not be read in R.C.S. 242

of 2012 which is instituted by the Respondents.

6. In my view, no such apprehension need to be nurtured.

7. If the Petitioners are permitted to withdraw R.C.S. 108 of 2012 and R.C.S. 243 of 2012, and since the prayer is for unconditional withdrawal of the suits, the same will have to be granted, the evidence which is recorded in R.C.S. 243 of 2012 is not wiped out and shall have to be read in R.C.S. 242 of 2012.

8. The orders impugned are unsustainable and are set aside.

9. R.C.S. 108 of 2012 and R.C.S. 243 of 2012 are disposed of as unconditionally withdrawn.

10. It is made clear that the evidence already recorded in R.C.S. 243 of 2012 shall be read in R.C.S. 242 of 2012 notwithstanding withdrawal of the suits.

11. The Petitions are disposed of.

12. The learned trial Judge is requested to expedite disposal of the suits.

(ROHIT B. DEO, J.)