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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 8 OF 2022

RANJAN BHAUSAHEB DOMBEAPPLICANTS
AND OTHERS

V/s.

MAHESH DEVIDAS SATHE AND ORSRESPONDENTS

Mr. Machhindra A. Patil advocate for the Applicant

CORAM : NITIN W. SAMBRE, J.

DATE: JANUARY 27, 2022.

P.C.:

1) This Revision is by Defendant questioning the order passed below Exh. 1 and 108 in R.C.S. No. 11/2013. In the said Suit, Plaintiff-Respondent moved pursis for withdrawing the Suit as per the order of the Apex Court passed in SLP No. 7064/2021 on 30/09/2021. The Trial Court permitted Respondent-Plaintiff withdrawal of the Suit as per order of the Apex Court. The contention of Mr. Patil are, the Court below committed an error in conducting

itself in accordance with provisions of Order XXIII of Code of Civil Procedure, 1908. According to him, the Trial Court ought not to have permitted withdrawal of the Suit particularly when Petitioner-Defendant had strong objection about the same as a separate Suit is initiated by the Respondent-Plaintiff.

2) I have considered said submissions.

3) The Apex Court while dealing with one of the offshoot in Special Leave to Appeal (Civil) No. 7064/2021 vide order dated 30/09/2021 made following observations.

“We have heard learned counsel for parties.

In view of what transpired in the hearing, learned counsel for the respondent no. 1 on instructions state that he may be permitted to withdraw the suit itself filed by him with liberty to file an appropriate fresh suit in accordance with law. Liberty granted.”

4) In the aforesaid background, it is apparent that prayer of Respondent-Plaintiff for withdrawal of the Suit was allowed with liberty to file appropriate fresh Suit in accordance with law. In that view of the matter, in my opinion, contention of the Applicant that

the conditional withdrawal of the Suit with liberty to file fresh Suit ought not to have granted by the Trial Court cannot be accepted as this Court cannot sit over in Appeal against the order of the Apex Court. That being so, no case for interference is made out. Revision lacks merit, stands rejected.

[NITIN W. SAMBRE, J.]