

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.14331 OF 2023
IN FA/3595/2022 WITH FA/3595/2022 WITH FA/3663/2022

Nitin Bajranglal Malu And Another ...Applicants

Versus

Mustafakhan Yusufkhan Pathan Died
Through Legal Heirs Bashidkhan M Pathan
And Others ...Respondents

Mr. S.V. Dixit, Advocate for the applicants.
Mr. S.S. Manale, Advocate for the respondents.

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CORAM : SMT. VIBHA KANKANWADI AND

ABHAY S. WAGHWASE, JJ.

DATE : 1st DECEMBER, 2023

ORDER :

1. Issue notice to the respondents.
2. Mr. Satish Manale, learned Advocate waives service of notice for respondents.
3. The present application has been filed for withdrawal of First Appeal No. 3595/2022. After hearing both sides what could be gathered is that the present application can be termed under Order XXIII Rule 1 of CPC which has to be made applicable to the appeals also, since appeal is in continuation of

of the suit. Here, the suit that was filed by present applicants/original plaintiffs i.e. Special Civil Suit No. 99/2011 was for specific performance of the contract and in the alternative for the refund of earnest amount together with interest. By judgment and decree, learned 3rd Joint Civil Judge, Senior Division, Latur, decreed the alternate prayer on 02.09.2022, directing the defendants/respondents to pay amount of Rs.10,00,000/- to the plaintiffs with simple interest at the rate of 6% from 11.01.2011 till realization of decretal amount. Thus, it can be seen that the main prayer regarding specific performance of the contract was refused. The present applicants/appellants had challenged the said refusal of the main prayer in the appeal thereby they appear to be satisfied with the alternate prayer that has been granted in their favour. Though it appears that present respondents have filed First Appeal No. 3663/2022 to challenge the said alternate prayer granted in the said judgment and decree and it is still pending, in view of this application that the appellants did not want to prosecute the appeal further and they want to abandon their prayer for specific performance, application stands allowed and disposed of and in consequence thereof, First Appeal No. 3595/2022 stands disposed of as withdrawn.

4. Court fees refund be given as per rules. Decree be drawn accordingly.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE