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

**WRIT PETITION NO. 9826 OF 2022
WITH
CIVIL REVISION APPLICATION NO. 307 OF 2021**

Shri Tejnarayandas Guru Mahant
Shyamaldas and Anr ... Petitioners

vs.

Shri Chandradevdas Gurukamaldas alias
Shri Chandradevdas Guru Kamaldas and
Ors. ... Respondents

Mr. Vijay Killedar for the Petitioners/Applicant in both matters.

Mr. Akshay J. Kandarkar for Respondent no.1.

Mr. Babu M.B. i/b. Mr. G.S. Bhat for Respondent nos.2 and 3.

Mr. Nikhil Waje for Respondent no.4.

CORAM : SANDEEP V. MARNE, J.

DATED : 21 FEBRUARY, 2023

P.C. :-

1. By this Petition the Petitioner challenges order dated April 1, 2022 passed by the Civil Judge Senior Division, Kalyan rejecting the Petitioners/Plaintiffs application at Exh.192 in Spl. C.S. No. 214 of 2012 seeking leave to withdraw the Suit qua defendant nos. 4 and 5.

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2. Defendant no. 5 has already been deleted from the suit by virtue of order dated August 17, 2022 of this court in Writ Petition No. 9826 of 2022.

3. The application for withdrawal of the suit was originally contested by Defendant no. 5 who now stands deleted from the array of parties.

4. The Suit was sought to be withdrawn against Defendant nos. 4 and 5 on the basis of settlement entered into between Plaintiff and Defendant nos. 1 to 3. That settlement would obviously not be binding on Defendant nos. 4 and 5.

5. Learned counsel appearing for Defendant no. 4 (who is respondent no. 4) submits that in case this court clarifies that the settlement/consent terms entered into between the Plaintiff and Defendant nos. 1 to 3 would not bind Defendant no. 4, his client does not have any objection to the withdrawal of the suit against Defendant nos. 4.

6. As observed above the consent terms/settlement entered into between Plaintiff and Defendant nos. 1 to 3 would not bind Defendant no. 4.

7. In that view of the matter Writ Petition is allowed. Plaintiffs' application for withdrawal of the Suit unconditionally against Defendant no. 4 is allowed and Special Civil Suit No. 214 of 2012 is permitted to be unconditionally withdrawn against Defendant no. 4.

8. Writ Petition is disposed of in the above terms.

(SANDEEP V. MARNE, J.)