

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6871 OF 2023

Shashi K Kuttaeppan

...Petitioner

Versus

Indrayani Eatate Developers Pvt. Ltd. & Ors

...Respondents

Mr. Rahul Singh a/w Mr. Yash Naik i/b Mr. Piyush A. Singh for the
Petitioner.

Mr. Rumi Mirza i/b Mr. Kaushal Thakker for Respondent No. 1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : NOVEMBER 6, 2023

P. C. :

1. Heard.

2. The challenge in the Petition is to the order dated 6th March, 2023 permitting the Respondent who is the Plaintiff in RAE Suit No. 990 of 2010 to withdraw the suit as against the Defendant No. 6 unconditionally.

3. Learned counsel for the Petitioner submits that it is only upon the Application made for taking the written statement on record that the Respondent Plaintiff filed this Application for withdrawal of the proceeding, as against the Petitioner who is the Defendant No. 6. He would further submit that, as the Petitioner is a director of the company

in the absence of the Petitioner the Company will not be in a position to defend the proceedings.

4. Consider the submission and perused the record.

5. By the impugned order, the Trial Court has permitted the Respondent to withdraw the suit qua the Petitioner unconditionally. It is not as if any liberty has been granted to the Respondent to file the suit afresh against the Petitioner which could have prejudiced the rights of the Petitioner. It is settled position that the Plaintiff is dominus litis and he cannot be compelled to proceed against a party against whom he does not wish to proceed. As regards the contention that in the absence of the Petitioner, the Company will not be able to defend the proceedings, the answer can be found in the provisions Order XXIX of CPC which deals with suits by and against the corporation. Apart from the above submission there are no other submission advanced.

6. There is no infirmity in the impugned order inasmuch as the provisions of Order XXIII of CPC have been duly complied with by the Trial Court permitting withdrawal of the suit unconditionally.

7. Petition is devoid of merit and stands dismissed.

(SHARMILA U. DESHMUKH, J.)