

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

**APPEAL FROM ORDER NO. 454 OF 2023
WITH
INTERIM APPLICATION NO. 12700 OF 2023**

Avinash s/o Balbir Wadwan ...Appellant
Versus
New D. N. Nagar CHS Union Ltd. and ors. ...Respondents

Mr. Ashok Saraogi, for the Appellant.
Ms. Naziya Khan, i/b M/s. Wadia Ghandy & Co., for
Respondent No.2.
Mr. Nilesh Parte, for Respondent No.3.

CORAM: N. J. JAMADAR, J.

DATED : 21st JUNE, 2023

Order:-

1. Heard the learned Counsel for the appellant.
2. The challenge in this appeal is to an order dated 25th April, 2023 passed by the learned Judge, City Civil Court in Notice of Motion No.1097 of 2017 in LC Suit No.893 of 2017, whereby the Notice of Motion taken out by the plaintiff seeking to be put in possession of the suit premises came to be dismissed on the ground, *inter alia*, that during the pendency of the Notice of Motion on 17th October, 2019, defendant No.3 was put in possession of the suit premises.

3. Mr. Saraogi, the learned Counsel for the appellant, on instructions, seeks leave to withdraw the appeal with liberty to prefer a Chamber Summons seeking amendment in the plaint so as to incorporate necessary averments and prayers and a duration to the trial court to decide the Chamber Summons and suit expeditiously.

4. Having regard to the nature of the controversy and prayers in the suit, the course suggested by Mr. Saraogi seems to advance cause of justice.

5. Hence, the appeal stands dismissed as withdrawn with liberty to take out a Chamber Summons to amend the plaint, within a period of three weeks.

6. In the event such Chamber Summons is taken out, the learned Judge, City Civil Court, is requested to decide the Chamber Summons on its own merits and in accordance with law after providing an opportunity of hearing to the defendants, who shall be at liberty to take all the defences which are available in law.

7. The learned Judge, City Civil Court, is also requested to make an endeavour to decide the suit itself as expeditiously as possible.

8. In view of dismissal of the appeal, interim application stands disposed.

[N. J. JAMADAR, J.]