

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 54 OF 2021
IN
SUIT NO. 705 OF 2013
WITH
SUIT NO. 705 OF 2013**

**Suvidha Developers & Anr.
IN THE MATTER BETWEEN
Habib Attaualla Khan & Ors.**

**..Applicants/Org. Defendants
..Plaintiffs**

Versus

Suvidha Developers & Anr.

..Defendants

Mr. Bahraiz Irani a/w Afrin Dalal, *Advocates for the Plaintiffs.*

**Mr. Rajiv Narula i/b. M/s. Jhangiani Narula & Associates,
*Applicants and for the Defendants in IA/54/2021.***

Mr. Habib A. Khan, Plaintiff No.1 is present in person.

**CORAM : B. P. COLABAWALLA, J
DATE : 24 MARCH 2023**

P.C.

1. The above Interim Application is filed by the Original Defendants seeking a rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. This Application is filed on the basis that the above Suit is not maintainable because what the Plaintiffs seek to do is to challenge the consent terms dated 26th

October, 1999 filed in Suit No. 4949 of 1999 and consent terms dated 1st April, 2002 filed in Arbitration Petition No. 347 of 2001.

2. It is the case of the Original Defendants that by virtue of the provisions of Order XXIII Rule 3 and Rule 3-A, a challenge to the consent terms cannot be by way of a separate suit, and if at all, they can be challenged only in the proceedings in which the consent terms were filed.

3. On examining this legal provision, the learned Counsel for the Plaintiffs, on instructions of Plaintiff No.1 who is present in Court today and who is also the constituted attorney of Plaintiff Nos. 2 to 5, stated that the Plaintiffs would like to withdraw the above Suit with liberty to file appropriate proceedings to challenge the aforesaid consent terms.

4. In light of the aforesaid statement, the above Suit is dismissed as withdrawn with liberty as prayed. No order as to costs.

5. Refund of court fees, if any, as per rules.

6. In light of the fact that the above Suit is now dismissed as withdrawn, nothing survives in the Interim Application filed by the

Original Defendants (seeking rejection of the plaint) and the same is disposed of accordingly.

7. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[B. P. COLABAWALLA, J].