



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

23 WRIT PETITION NO. 12337 OF 2024

**MS MANIKCHAND BABULAL RATHOR THROUGH ITS PARTNER
VERSUS
SYED ARIFUDDIN SYED ZIYAUDDIN AND OTHERS**

Mr.A. V. Hon, Advocate for the petitioner
Mr. A. D. Hande, Advocate for respondent no.1.

CORAM : R. M. JOSHI, J.

DATE : 18th NOVEMBER, 2024

PER COURT :-

1. When this Court has shown its disinclination to cause interference in the impugned order, at this stage learned counsel for the petitioner seeks withdrawal of the petition with liberty to move appropriate application after evidence of petitioner/plaintiff is over.

2. Perusal of the impugned order shows that this the opinion of the learned Trial Court that the application filed by the petitioner is nothing is but collecting evidence which is not permissible in law. Perusal of the order passed by the Appellate Court, following issue was directed to be framed :

. Whether the plaintiff has described the suit property correctly?

3. The Appellate Court has also permitted the parties to lead evidence. The defendant has filed affidavit in lieu of examination in chief in support of the said issue. He is yet to be cross examined. Though the learned Trial Court is justified in rejecting application at this stage, liberty needs to be granted to the petitioner to file appropriate application after his evidence is over. If such application is filed, Trial Court to decide the same in accordance with law.

4. Petition is disposed of in above terms.

(R. M. JOSHI, J.)

ssp