IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11210 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH
WRIT PETITION NO.11211 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH
WRIT PETITION NO.11212 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH
WRIT PETITION NO.11218 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH
WRIT PETITION NO.11219 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH
WRIT PETITION NO.11220 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH
WRIT PETITION NO.11222 OF 2025

Indusind Bank Ltd. ... Petitioner

versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11223 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11226 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11228 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11230 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11233 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11238 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11240 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11242 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11244 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11245 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
State of Maharashtra and Ors. … Respondents

WITH

WRIT PETITION NO.11246 OF 2025

Indusind Bank Ltd. ... Petitioner
versus
The State of Maharashtra and Ors. … Respondents

Mr. V.S.Kapse with Mr. Upendra Mahadik i/by Fast Track Legal, for Petitioners.
Mr. Anchit Ojha i/by Mr. Sunder Dangar for Respondent No.2 in all matters.
Mr. Amolesh Mukherjee – General Manager (Admn) of Respondent No.2 present.
Smt. M.S.Shrivastava, AGP for State in WP No.11210 of 2025 and 11230 of 2025.
Mr. J.P.Patil, AGP for State in WP No.11211 of 2025.
Mr. H.D.Mulla, AGP for State in WP No.11212 of 2025.
Mrs. S.R.Crasto, AGP for State in WP No.11218 of 2025.
Mrs. S.S.Jadhav, AGP for State in WP No.11219 of 2025.
Mr. P.V.Nelson Rajan, AGP for State in WP Nos.11220 of 2025, 11233 of 2025, 11238 of 2025, 11244 of 2025.

Mr. B.B.Dahiphale, AGP for State in WP Nos.11222 of 2025, 11240 of 2025 and 11246 of 2025.
Mr. S.L.Babar, AGP for State in WP No.11223 of 2025.
Mrs. V.S.Nimbalkar, AGP for State in WP Nos.11226 of 2025 and 11228 of 2025.
Mrs. A.A.Nadkarni, AGP for State in WP No.11242 of 2025 and 11245 of 2025.

CORAM: N.J.JAMADAR, J.

DATE : 21 AUGUST 2025

P.C.

1. Heard the learned Counsel for the parties.

2. These Petitions are directed against identical orders passed by the Appellate Bench of the Court of Small Causes in Revision Applications preferred by the Petitioner – Defendant Bank against the orders passed by the learned Judge, Court of Small Causes in the suits, whereby the applications preferred by the Petitioner for rejection of the plaint on the ground that the Petitioner had already vacated the subject premises which was given on leave and licence to the Petitioner by the tenant.

3. It was the claim of the Petitioner Bank that it had taken the premises on leave and licence basis, in view of the exemption under Section 3(b) of the Act, 1999, it was not covered by the provisions contained in the Maharashtra Rent Control Act, 1999, and had also vacated the subject premises, and, therefore, the suits were not tenable against the Petitioner.

4. Learned Judge, Court of Small Causes, rejected the applications for

rejection of the plaint. Aggrieved by the said orders, Revision Applications were filed before the Appellate Bench. On 10 July 2025, when the Revision Applications were listed before the Appellate Bench, realizing that the plaint cannot be rejected in part, the Petitioner filed applications seeking permission to withdraw the Revision Applications with liberty to file applications under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908, to strike out the name of the Petitioner – defendant Bank from the array of parties.

5. The Appellate Bench took note of the said application and submission on behalf of the Petitioner and permitted the Petitioner to withdraw the Revision Applications, subject to payment of costs of Rs.500/- to the Plaintiffs. However, the liberty as sought by the Petitioner to file applications for striking out the name of the Defendant Bank from the array of Defendants, was refused.

6. Being aggrieved, the Defendant Bank has invoked the writ jurisdiction.

7. It appears, on the first day of the listing of the Revision Applications before the Appellate Bench, the Petitioner – Defendant Bank sought leave to withdraw the Revision Applications with liberty to file applications under Order 1 Rule 10(2) of the Code, before the Trial Court. The Appellate Bench merely granted permission for withdrawal of the Revision Applications without liberty to file such application, observing thus :

> “6. Since the applicant has now admitted the legality and

> propriety of the Trial Court's order and wishes to withdraw the present application, we find no impediment in allowing such withdrawal. However, the liberty sought to file a fresh application under Order 1 Rule 10(2) of the CPC cannot be granted at this stage."

8. The aforesaid order passed by the Appellate Bench does not appear to be in consonance with law. Under Order 23 Rule 1(3) of the Code, when a party seeks permission to withdraw the suit with liberty to file a fresh suit on the same cause of action on the ground that the suit would fail on account of a formal defect, the Court is empowered to grant permission to withdraw the suit with such liberty. However, the Court cannot grant the prayer in such application in part, in the sense that, the Court would grant permission to withdraw the suit while refusing to grant liberty to institute a fresh suit. If the Court is not inclined to permit a party to withdraw the proceeding with liberty to institute a fresh proceeding, proper course is to reject the application in its entirety.

9. A profitable reference in this context can be made to a judgment of the learned Single Judge of this Court in the case of **Devidas Tulsiram Brijwani V/s. The Commissioner, Poona Municipal Corporation**[1] wherein the Plaintiff therein had filed an application to withdraw the suit with liberty to file a fresh suit under Order 23 Rule 1(2) of the Code. The learned Trial Judge

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declined to allow the suit to be withdrawn with liberty to the Plaintiff to file a fresh suit and instead made an order whereby the suit stood withdrawn without such liberty. This Court held that the order passed by the learned Trial Judge was erroneous. It was observed as under :

> "For withdrawing a suit without liberty under Order 23, Rule 1(1) of the Civil Procedure Code, no permission or order of the Court was required by the Plaintiff. The Plaintiff's application was for withdrawing with liberty to file a fresh suit under Order 23, Rule 1(2) and, if the learned Jude of the Court below thought that that liberty should not be granted, he could reject that application, but he could not make an order whereby the Plaintiff's suit stood withdrawn without liberty to file a fresh suit, with the result that the plaintiff would be precluded from filing a fresh suit in respect of the same cause of action as stated in sub-rule(3) of Order 23, Rule 1 of the Code of Civil Procedure. The order passed by the lower Court is, therefore, erroneous and must be set aside."

10. In the case of **Mario Shaw V/s. Martin Fernandez and Anr.**[2] the principle was again reiterated in the context of withdrawal of a dispute before the Co-operative Court with liberty to institute a fresh proceeding. Learned Judge, Co-operative Court had permitted the unconditional withdrawal of the suit without granting any liberty for institution of fresh proceedings. In that context, this Court held that, the application made by the respondents before

2 AIR 1996 Bombay 116

the Co-operative Court was for withdrawal of the dispute with a liberty to file fresh proceedings. If that was so, the Co-operative Court was clearly in error in passing an order of withdrawal without granting permission to initiate fresh proceedings. It is well settled that if an application is made for withdrawal of the suit with liberty to file a suit, it is not open for the Court to grant only permission for withdrawal without liberty to institute the proceedings though it is open for the Court to reject such application.

11. The aforesaid being the position in law, the Revisional Court was not justified in disposing of the Revision Applications as withdrawn while refusing to grant liberty to file applications under Order I Rule 10(2) of the Code. If the Court was not inclined to grant such liberty, proper course would have been to reject the application for withdrawal and decide the Revision Applications on their own merits. Therefore, the impugned orders cannot be sustained. Resultantly, the Petitions deserve to be allowed.

12. Hence, the following order :

ORDER

(i) The Writ Petitions stand partly allowed.

(ii) The Impugned orders stand quashed and set aside.

(iii) Revision applications stand restored to the file of the Appellate Bench of the Court of Small Causes.

(iv) The Appellate Bench is requested to decide the applications for

withdrawal of the Revision Applications with liberty to file applications under Order 1 Rule 10(2) of the Code afresh, after providing an opportunity of hearing to the parties, and depending upon the orders which may be passed on the said applications, decide the Revision Applications also in accordance with law, as expeditiously as possible.

(v) It is hereby made clear that this Court has not entered intro the merits of the matter as regards the prayer for rejection of the plaint.

(N.J.JAMADAR, J.)

Signed by: S.S.Phadke
Designation: PS To Honourable Judge
Date: 25/08/2025 10:17:54