



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAW) NO.2862 OF 2025
IN
WRIT PETITION NO.5320 OF 2025 (D)

Adv. Arvind K. Waghmare Vs. Dnyaneshwar Shelke and ors.

*Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order*

Court's or Judge's Order

Mr. M. M. Akhtar Jamal, Advocate for applicants/petitioner.

CORAM : ROHIT W. JOSHI, J.

DATE : 18.12.2025.

. This is an application for speaking to the minutes in relation to order dated 25.11.2025. The petition arises out of order dated 01.08.2025 passed by the learned Trial Court on an application filed by the petitioner/original plaintiff seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action, which was rejected by the learned Trial Court.

2. The learned Advocate for the petitioner tendered a pursis seeking permission to withdraw Regular Civil Suit No.16 of 2022 unconditionally. In view of the said pursis, the petition came to be disposed of by granting permission to the petitioner/plaintiff to withdraw Regular Civil Suit No.16 of 2022 unconditionally.

3. It is also recorded that withdrawal of the suit will not affect the counter-claim filed below Exh.49. The learned Advocate points out that Exh.49 is, in fact, an application seeking permission to file counter-claim. He

further states that the said application was pending for consideration before the learned Trial Court as on 25.11.2025 i.e. the date on which the petition came to be disposed of.

4. The order dated 25.11.2025 was passed permitting the petitioner/plaintiff to withdraw the civil suit under the assumption that a counter-claim was filed by the defendants and having regard to the legal position that even if a suit is withdrawn, a counter-claim can be prosecuted and adjudicated on its own merits, as provided under Order VIII Rule 6-D of the Code of Civil Procedure, 1908.

5. This Court was, therefore, of the opinion that the rights of the defendants were not being affected by virtue of the order dated 25.11.2025. However, since an application seeking permission to file counter-claim is pending, rights of the defendants may be affected adversely.

6. In view of the above, order dated 25.11.2025 passed in Writ Petition no.5320 of 2025 is recalled. Writ Petition No.5320 of 2025 and Regular Civil Suit No.16 of 2022, pending on the file of the learned Civil Judge, Junior Division, Kalmeshwar are restored to file.

7. Application for speaking to minuets is **disposed of** accordingly.

(ROHIT W. JOSHI, J.)