



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 WRIT PETITION NO. 9407 OF 2024

KISHAN KONDIBA BHOSLE
VERSUS
GOVIND KONDIBA BHOSLE AND OTHERS

...

Mr. Rahul Rajiv Deshmukh, Advocate for the Petitioner

Mr. Shrikant Y. Patil h/f. Mr. B. N. Patil, Advocate for Respondent Nos.1 and 2

...

CORAM : AJIT B. KADETHANKAR, J.

DATE : 01.04.2026

PER COURT :-

. An application under Order XXIII Rule 1(3) of the Code of Civil Procedure was filed by the present petitioner in Regular Civil Suit No. 1178 of 2022 pending before the Court of the learned 2nd Joint Civil Judge, Junior Division, Ausa. By the said application, the petitioner sought permission to withdraw the suit with liberty to file a fresh suit.

2. The learned Trial Court, by the impugned order dated 26.09.2023 observed that the application did not disclose any formal defect on the basis of which leave under Order XXIII Rule 1(3) of the Code of Civil Procedure was sought. It was held that in the absence of a specific pleading regarding such formal defect, permission to withdraw the suit with liberty to file a fresh suit on the same cause of action could not be granted.

3. Being aggrieved by the said order dated 26.09.2023, the petitioner has approached this Court.

4. After arguing the matter for some time, Mr. Deshmukh, learned counsel for the petitioner seeks leave to withdraw the present petition with liberty to file a fresh application before the Trial Court, properly stating the grounds in terms of Order XXIII Rule 1(3) of the Code of Civil Procedure.

5. Mr. Shrikant Y. Patil h/f. Mr. B. N. Patil, learned counsel for the respondent Nos.1 and 2 expresses his no objection to the withdrawal of the present writ petition. He, however, submits that in the event a fresh application is filed by the petitioner, an opportunity of hearing be granted to the defendants and the Trial Court be directed to decide the same in accordance with law.

6. Leave is granted to withdraw the petition as prayed for.

7. The petitioner is at liberty to file a fresh application under Order XXIII Rule 1(3) of the Code of Civil Procedure before the Trial Court, if circumstances so warrant and if so advised.

8. If such an application is filed, the Trial Court shall decide the same on its own merits, in accordance with law, after giving an opportunity of hearing to all concerned parties.

9. The Writ Petition stands disposed of in the above terms.

[AJIT B. KADETHANKAR, J.]