

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9378 OF 2024

Suresh Laxmichand Dhanani
through her CA
Vaibhav Sahdu Sherkar & Anr.
V/S

....Petitioners

Mumbai, Mumbai Suburban and
Thane Zilla, Fulbagwan Sangh & Ors.

....Respondents

Mr. Shridhar V. Tajane *for the Petitioners.*

Mr. R.D. Soni with Ms. Trupti J. Gohil *for Respondent No.1.*

Mr. Harsh Pathak i/b Mr. Durgaprasad Sabnis *for Respondent No.2.*

Ms. Sulbha D. Chipade, AGP *for Respondent No.3/State.*

CORAM : SANDEEP V. MARNE, J.

DATE : 1 APRIL 2026.

P.C.:

1. The Petition challenges order dated 22 November 2023 passed by the learned Judge, Small Causes Court, imposing costs of Rs.2,00,000/- on the Petitioners/Plaintiffs as a pre-condition for permitting withdrawal of the Suit.

2. I have heard Mr. Tajane, the learned counsel appearing for Petitioners, Mr. Soni, the learned counsel appearing for Respondent No.1, Mr. Pathak, the learned counsel appearing for Respondent No.2 and Ms. Chipade, AGP for Respondent/State.

3. Plaintiffs instituted Licensee Declaration Suit No.104 of 2017 seeking a declaration that they are a licensee in respect of the suit premises. The suit remained pending for over 16 long years. The Plaintiffs moved for withdrawal of the Suit on 22 November 2023. It is contended that filing of the Suit was a mistake and claim of license was premised on ill-advice given by an Advocate. Withdrawal of Licensee Declaration Suit is apparently aimed at giving up claim of license. Be that as it may. A party filing Suit is entitled to withdraw the same. The Plaintiffs have already filed pleadings in Licensee Declaration Suit No.104 of 2017 and the said pleadings would obviously haunt the Plaintiffs in the other proceedings. Plaintiffs cannot get away with the pleadings filed in Licensee Declaration Suit No.104 of 2017 by taking a specious plea that the suit was filed under ill-advice. Therefore, the Defendants in Licensee Declaration Suit No.104 of 2017 would not suffer any prejudice while prosecuting their own L.E. Suit, which is filed for ejectment of the Petitioner. In my view therefore, imposition of costs on the Petitioners/Plaintiffs as a precondition for withdrawal of the Suit was not warranted in the facts and circumstances of the present case. However, while setting aside the direction for payment of costs, it is expressly clarified that all the pleadings filed in Licensee Declaration Suit No.104 of 2017 would be relevant for the purpose of deciding various other proceedings pending between the parties.

4. Order dated 22 November 2023 is accordingly set aside in part to the limited extent of imposition of costs of Rs.2,00,000/-. Rest of the order shall remain operative.

5. Writ Petition is **partly allowed** in above terms. There shall be no order as to costs in the present Petition.

(SANDEEP V. MARNE, J.)

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signed by
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KATKAM
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