

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

CIVIL REVISION APPLICATION NO. 454 OF 2025

Vilas Dhondiba Satav

...Applicant

Versus

Harshad Vilas Satav and anr.

...Respondents

SANTOSH
SUBHASH
KULKARNI

Mr. Pradeep Thorat, a/w P. r. Gujar, for the Applicant.

Mr. Vijay Chandivale, (through VC), a/w Vishal Tambe, for
Respondent No.2.

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2026.02.16
22:08:34 +0530

CORAM: N. J. JAMADAR, J.

DATED: 10th FEBRUARY, 2026

Order:-

1. Heard the learned Counsel for the parties.
2. This revision application is directed against an order dated 1st August, 2025, whereby an application filed by the plaintiff – applicant seeking permission for withdrawal of the suit being RCS/2209/2023 with liberty to institute a fresh suit under Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908 (“the Code”), came to be rejected.
3. The applicant claimed to be the owner of the properties described in paragraph 1 of the plaint in RCS/2209/2023 (“the suit properties”). Those suit properties were the ancestral properties and allotted to the plaintiff in partition in the year

1975. On 28th March, 2016, the plaintiff had executed a registered Power of Attorney in favour of his son Harshad – defendant No.1, primarily to manage and maintain the suit properties.

4. In the year 2023, it transpired that, defendant No.1 had on the strength of the said Power of Attorney raised finances by giving security of the suit properties, and executed certain instruments. Asserting that the plaintiff was unaware of those transactions and execution of the instruments, the plaintiff instituted the suit for a declaration that, the Power of Attorney executed in favour of defendant No.1 was void, the instruments executed by defendant No.1 pursuant to the said Power of Attorney were not binding on the plaintiff and the charge on the suit properties, created by defendant No.2 Bank, was sham and bogus, and for the consequential relief of injunction.

5. By filing an application (Exhibit-64), the plaintiff sought to withdraw the aforesaid suit with liberty to file a fresh suit against the defendants. It was, *inter alia*, asserted that after the institution of the suit, it transpired that, defendant No.2, in collusion with the panel valuer and auditor of defendant No.2, was attempting to grab the suit property 1A by selling the same at a throwaway price and by practicing fraud on the plaintiff.

For that purpose, the plaintiff was required to make necessary averments in the plaint and implead even the valuer and auditor as party defendants to the suit and seek appropriate reliefs. It was not possible to carry out the amendment in the plaint in RCS/2209/2023 to incorporate the additional averments, add parties and seek further reliefs. Hence, the application under Order XXIII Rule 1(3) of the Code.

6. Respondent No.2 – Bank resisted the application.

7. By the impugned order, the learned Civil Judge was persuaded to reject the application observing, *inter alia*, that the grounds ascribed by the plaintiff for permission for withdrawal of the suit with liberty to institute a fresh suit did not constitute a sufficient cause. Nor it could be said that the suit would fail on account of a formal defect. Therefore, such permission cannot be granted.

8. Mr. Thorat, the learned Counsel for the applicant, submitted that the learned Civil Judge misdirected himself in rejecting the application for permission to withdraw the suit with liberty to file a fresh suit in respect of the same subject matter. It was submitted that, under the provisions of clause (b) of Order XXIII Rule 1(3) of the Code, the expression “sufficient

grounds” need not be construed *ejusdem generis* with the expression, “formal defect”, which finds place in clause (a) of Order XXIII Rule 1(3) of the Code. To buttress these submissions Mr. Thorat placed reliance on a judgment of a learned Single Judge of this Court in the case of ***Manjulabai Tulshiram Shende and ors. vs. Bapurao Bhaduji Chaudhary and ors.***¹ and a judgment of the Supreme Court in the case of ***V. Rajendran and another vs. Annasamy Pandian (dead) through Legal representatives Karthyayani Natchiar***².

9. Taking the Court through the documents on record, Mr. Thorat made an endeavour to draw home the point that respondent No.2 was attempting to sell the suit property 1A at throwaway price, when the market value of the property was in excess was Rs125 Crores.

10. In the case of ***K. S. Bhoopathy vs. Kokila***³, the Supreme Court has expounded the distinction between an unconditional withdrawal/abandonment of the suit under Order XXIII Rule 1(1) and withdrawal with liberty to institute a fresh suit under Order XXIII Rule 1(3) of the Code. The factors which ought to

1 2006 SCC OnLine Bom 899.

2 (2017) 5 SCC 63.

3 (2000) 5 SCC 925.

weigh with the Court in granting such permission were expounded as under:

“13. The provision in Order XXIII Rule 1 CPC is an exception to the common law principle of non-suit. Therefore on principle an application by a plaintiff under sub-rule 3 cannot be treated on par with an application by him in exercise of the absolute liberty given to him under sub-rule 1. In (he former it is actually a prayer for concession from the Court after satisfying the Court regarding existences of the circumstances justifying the grant of the such concession. No doubt, the grant of leave envisaged in sub-rule (3) of Rule 1 is at the discretion of the Court but such discretion is to be exercised by the Court with caution and circumspection. The legislative policy in the matter of exercise of discretion is clear from the provisions of sub-rule (3) in which two alternatives are provided; (1) where the Court is satisfied that a suit must fail by reason of some formal defect, and the other where the Court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim. Clause (b) of sub-rule (3) contains the mandate to the Court that it must be satisfied about the sufficiency of the grounds for allowing the plaintiff to institute a fresh suit for the same claim or part of the claim on the same cause of action. The Court is to discharge the duty mandated under the provision of the Code on taking into consideration all relevant aspects of the matter including the desirability of permitting the party to start a fresh round of litigation on the same cause of action. This becomes all the more important in a case where the application under Order XXIII Rule (1) is filed by the plaintiff at the stage of appeal. Grant of leave in such a case would result in the unsuccessful plaintiff to avoid the decree or decrees against him and seek a fresh adjudication of the controversy on a clean slate. It may also result in the contesting defendant losing the advantage of adjudication of the dispute by the Court or courts below. Grant of permission for withdrawal of a suit with leave to file afresh suit may also result in annulment of a right vested in the defendant or even a third party. The appellate/second appellate court should apply its mind to the case with a view to ensure strict compliance with the conditions prescribed in Order XXIII Rule 1(3) CPC for exercise of the discretionary power in permitting the suit with leave to file a fresh suit on the same cause of action. Yet another reason in support of this view is that withdrawal of a suit at the appellate/second appellate stage results in wastage of public time of Courts which is of considerable importance in

the present time in view of large accumulation of cases in lower courts and inordinate delay in disposal of the cases.

14. In *Bakhatawar Singh and Another v. Soda Kaur and Another*, [1996] 11 SCC 167 the question of grant of permission under clause (3) of Order XXIII Rule 1 of the CPC was considered wherein it was held :

"In the present case all the courts below including the High Court concurrently found that the plaintiffs/appellants failed to produce any evidence to show that the permission, to withdraw the suit was given on the ground that the suit was bound to fail by reason of some formal defect or there were sufficient grounds for allowing the plaintiffs to institute a fresh suit in respect of the same subject-matter. The plaintiffs had not even produced the application which is said to have been filed for withdrawal of the earlier suit with permission to file a fresh suit on the same cause of action to show as to what was the formal defect in the earlier suit by reason of which it was sought to be withdrawn. In these facts and circumstances no case for fresh institution of suit on the same cause of action and for the same relief after the withdrawal of the earlier suit was made out by the plaintiffs/ appellants in accordance with the provisions of clause (3) of Order 23 Rule 1 of the Code."

(emphasis supplied)

11. Under sub-rule (3) of Rule 1 of Order XXIII, the Court can permit a plaintiff to withdraw the suit with liberty to institute a fresh suit in respect of the subject matter of such suit or part of the claim, if the Court is satisfied that; (a) the suit would otherwise fail for some formal defect or (b) there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or a part of a claim.

12. In the case of *V. Rajendran* (supra), the Supreme Court, adverted to two approaches to the interpretation of the words "sufficient grounds" which find place in clause (b) of sub-rule (3)

of Rule 1 of Order XXIII of the Code. One view was to construe the term “sufficient grounds”, *ejusdem generis* formal defect or at least analogous to the formal defect. The other was to construe the said expression independent of the expression “formal defect” and give a wider discretion to the Court to allow to withdraw the suit with liberty to institute a fresh suit. The observations in paragraph 11 read as under:

“11. In terms of Order 23 Rule 1(3)(b) where the court is satisfied that, there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the words "sufficient grounds", there are two views :one view is that these grounds in clause (b) must be "*ejusdem generis*" with those in clause (a), that is, it must be of the same nature as the ground in clause (a), that is, formal defect or at least analogous to them; and the other view was that the words "other sufficient grounds" in clause (b) should be read independent of the words a "formal defect" and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with "formal defect" envisaged under clause (a) of Rule 1 sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b), that is, "sufficient grounds".

(emphasis supplied)

13. In the case at hand, even if the expression, “sufficient grounds” is construed are generously and is not given a constricted sense of being analogous to the expression “formal defect”, yet, this Court does not find that the learned Civil Judge committed any jurisdictional error or material irregularity in

declining to grant permission to withdraw the suit with liberty to institute a fresh suit.

14. First and foremost, it is necessary to note that RCS/2209/2023 is primarily and singularly directed against the alleged unauthorized and unlawful acts of Harshad (D1), the son of the plaintiff, in availing the financial facilities from defendant No.2. The legality and validity of the actions of defendant No.2 Bank was not sought to be independently assailed *de hors* the alleged fraudulent acts of defendant No.1. In the application for withdrawal with permission to institute a fresh suit, however, the plaintiff professed to assert that the suit property 1A was being sold at a throwaway price though the valuation of the said property exceeded Rs.125 Crores. The challenge sought to be mounted by the plaintiff was, thus, to the measures initiated by respondent No.2 Bank.

15. I am afraid, from the tenor of the averments in the plaint in RCS/2209/2023, if compared and contrasted with the stand of the applicant in the application seeking permission to withdraw the suit with liberty to institute the fresh suit, an inference becomes inescapable that the subject matter of the proposed suit, would be materially distinct from the subject matter of RCS/2209/2023.

16. The expression, “subject matter” used in Order XXIII Rule 1(3) of the Code does not mean the property. The said expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Since the cause of action and the relief claimed in the second suit are not the same as in the first suit, it cannot be said that the subject of the second suit is the same as that in the previous suit (*Vallabh Das vs. Dr. Madan Lal and ors. 1971 SCC 761*).

17. From the grounds sought to be ascribed for permission to withdraw the suit with liberty to institute a fresh suit, it becomes evident that not only the cause of action for the proposed suit arose subsequent to the institution of the first suit but it is in respect of a completely distinct matter. The thrust of the plaintiff’s claim is that suit property 1A was being sold in a public auction under the sale proclamation dated 3rd July, 2025 though the value of the suit property is much higher. The cause of action in the proposed suit would, thus, be materially distinct from the cause of action in RCS/2209/2023.

18. In these circumstances, the learned Civil Judge was justified in declining to grant permission to withdraw the suit with liberty to institute a fresh suit, as the subject matter of the

suit proposed to be filed after withdrawal of the instant suit, would not be same. Resultantly, no interference is warranted in exercise of the revisional jurisdiction.

19. The Civil Revision Application, thus, stands dismissed.

20. It is, however, clarified that the applicant is at liberty to work out the remedies as available in law.

[N. J. JAMADAR, J.]