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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.1190 of 2019

Bhounik Co-operative Housing Society Ltd. & Anr. ... Plaintiffs

v/s.

Vina A. Siswawala (deleted since deceased) & Ors. ... Defendants

WITH
INTERIM APPLICATION NO.964 OF 2023
WITH
INTERIM APPLICATION(L) NO.15791 OF 2023
WITH
NOTICE OF MOTION NO.2179 OF 2019
WITH
INTERIM APPLICATION NO.6190 OF 2025
WITH
INTERIM APPLICATION(L) NO.31796 OF 2022
IN
Suit NO.1190 OF 2019

Mr. Gaurav Mehta, Ms. Shamima Taly, Mr. Aziz Mohd & Ms. Sehyr Taly i/by S. Mahomedbhai & Co. for the Plaintiffs

Mr. Gauraj Shah a/w. Mr. Dhaval i/b. Vimadalal & Co. for the Defendant Nos. 4 to 6, 9 to 11, 14 and 15

Mr. Yogendra Rajor a/w. Adv. K. Dedhia i/by Legal Chartered for the Defendant Nos.2 & 3

CORAM : ARIF S. DOCTOR, J.

DATE : 26th MARCH, 2026

P.C.

1. Mr. Mehta, learned counsel appearing on behalf of the Plaintiffs today sought leave to unconditionally withdraw the captioned Suit.

2. Mr. Mehta submitted that Plaintiffs were constrained to file the captioned Suit against the Defendants, who he submitted were non-cooperative tenants, who were refusing to vacate their respective flats. He, however, pointed out that on account of intervening circumstances viz. issuance of notice under Section 354 of the Mumbai Municipal Corporation Act 1888 and the demolition of building in question, he submitted that the Suit had effectively become infructuous and was therefore being withdrawn.

3. Mr. Mehta then tendered a decision of the Hon'ble Supreme Court in the case of *Anil Kumar Singh v. Vijay Pal Singh and Others*¹, from which he placed reliance on paragraph nos. 23 and 24, which read thus:

"23 In our considered opinion, when the plaintiff files an application under Order 23 Rule 1 and prays for permission to withdraw the Suit, whether in full or part, he is always at liberty to do so and in such case, the defendant has no right to raise any objection to such prayer being made by the plaintiff except to ask for payment of the cost to him by the plaintiff as provided in sub-rule (4).

24. The reason is that while making a prayer to withdraw the Suit under Rule 1(1), the plaintiff does not ask for any leave to file a fresh Suit on the same subject matter. A mere withdrawal of the Suit without asking for anything more can, therefore, be always permitted. In other words, the defendant has no right to compel the plaintiff to prosecute the Suit by opposing the withdrawal of Suit sought by the plaintiff except to claim the cost for filing a Suit against him."

4. In light of the aforesaid, he submitted that since the Plaintiffs were seeking to unconditionally withdraw the Suit without reserving any liberty, the withdrawal of the Suit could not be opposed by any party nor would the same cause prejudice to any party.

¹ (2018) 12 SCC 584.

5. Mr. Shah, the learned counsel appearing on behalf of Defendant Nos. 4 to 6, 9 to 11, 14 and 15 did not dispute the Plaintiffs' right to unconditionally withdraw the Suit. He, however submitted that the Suit was being withdrawn because the Defendants were ready to submit to a decree in the Suit and by the withdrawal of the Suit, the Defendants would be prejudiced. He also submitted that if the Suit is being withdrawn, the disputes between the Plaintiffs and his clients be referred to mediation, since his clients were not persons of means and were only desirous of obtaining their homes.

6. Mr. Mehta, learned counsel for the Plaintiffs submitted that there were, in fact without prejudice mediation talks going on between the parties but presently, he does not have instructions to submit any disputes to mediation.

7. The withdrawal of Suit was also opposed by Mr. Rajore, learned counsel appearing on behalf of Defendant Nos. 2 and 3. He submitted that there was collusion between the developer and the society and the Society (Plaintiff No. 2) had not duly authorized the committee to withdraw the Suit. Mr. Mehta, however submitted that the Suit is being withdrawn pursuant to a resolution passed by the society.

8. Mr. Rajore, submitted that Defendant Nos. 2 and 3 had also filed their independent Suit against the Plaintiffs, which was pending and that as per the order passed by the Hon'ble Supreme Court, both Suits were to be heard together. He therefore submitted that the present Suit could not be withdrawn in light of the fact that it was clubbed together with the Suit filed by Defendant nos.

2 and 3. He then, without prejudice to his contention, submitted that in the event the Court was inclined to permit withdrawal of the Suit, costs should be imposed. In support of his contention, he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of *Rameshwari Devi and others v. Nirmala Devi and Others*² as also in the case of *Salem Advocate Bar Association, T.N. v. Union India*³

9. Having heard the learned counsel and having considered the case law which are placed before me, I find no merit in the opposition by Defendant Nos. 2 & 3 to the withdrawal of the Suit. The Plaintiffs seek to unconditionally withdraw the Suit and hence the decision of the Hon'ble Supreme Court in the case of *Ajit Kumar Singh vs Vijaypal Singh and others* would apply. Merely because the Suit is tagged with the Suit filed by Defendant Nos. 2 and 3 does not mean that the Plaintiffs would not be at liberty to withdraw the same unconditionally. Additionally, given the fact that the reason for which the Suit was filed had itself become infructuous, I am not inclined to grant any costs.

10. The Suit is accordingly dismissed as withdrawn. Pending Interim Applications and Notice of Motions are accordingly disposed of.

11. Mr. Mehta assured the Court that despite this withdrawal of the Suit, all efforts for an amicable resolution of disputes shall be made by the developer and the members of the society. He submitted that qua Defendant Nos. 4 to 6, 9 to 11 14 and 15, the developer shall be open to make all attempts for reaching an

² (2011) 8 SCC 249.

³ (2005) 6 SCC 344.

amicable resolution of dispute. He also submits that such an attempt would be made qua Defendant Nos. 4 to 6, 9 to 11 14 and 15 in the event, they also may withdraw their Suit.

[ARIF S. DOCTOR, J.]