

**IN THE BOMBAY CITY CIVIL COURT AT MUMBAI
ORDER BELOW PURSIS EXHIBIT 50
IN
S.C. SUIT NO. 406 OF 2014**

Kurla Malayalee Samajam Trust **...Plaintiff**

Vs.

**1.M/s. S. Rajesh and Associates
and Ors.** **...Defendants**

Appearance

Learned Adv. Mr. Wilson Cherian for plaintiff.

Learned Adv. Ansari a/w Adv. Mangesh Kokare for defendant No.7

CORAM : HHJ R. S. Aradhye

(C.R.NO.62)

Date : 1st July, 2024

ORDER BELOW EXHIBIT-50

The present pursis is filed by the plaintiff for withdrawing the suit against defendants No. 7 and 8. The Predecessor of this Court has called the say of defendants No. 7 and 8 and accordingly at Exh.52 reply to the pursis is filed by both the defendants No. 7 and 8. Heard both the sides.

2. It is the case of plaintiff that defendant No.2 who was the partner of defendant No.7 firm expired in the month of September, 2021 and his wife Vaishali Rajesh Rao also expired in or around November, 2022. Defendant No.2 was the concerned person and tried to illegally entered in the suit premises. The present suit has already been abetted against defendant No. 2 and therefore, there is no role of defendants No. 7 and 8, so plaintiff prayed for withdrawal of suit against these defendants.

3. Vide reply Exh. 52, it is contended by the defendants No. 7 and 8, that defendant No. 2 Rajesh Rao and his wife Vaishali Rajesh Rao were the partners of defendant No.7 firm during their life time and after their demise, defendant No.7 continues to exist and survive as a partnership firm with other partners i.e. a) Shri Raghuvvee R. Putran (defendant No. 8), b) Shri Rambhau Kashiram Sakpal, c) Smt. Geeta Sakpal and) Shri Sandesh Sakharam Chavan. It is further the contention of defendants that vide Partnership Deed dated 26.11.2014, defendant No.7 is already on record of this suit and plaintiff is seeking a relief relating to the possession of suit property against defendants No. 2 and 7. Thus, pursis filed for withdrawal of suit is not at all maintainable and liable to be filed.

4. Furthermore, it is pointed out by the defendants that earlier suit No.3365/1994 filed by the plaintiff for same reliefs against defendants No. 2 and 7 came to be dismissed by Judgment and Decree dated 29.03.2011. The said Decree according to defendants is confirmed and upheld by the Hon'ble Bombay High Court and the Hon'ble Supreme Court of India by its Order dated 16.03.2012 and 08.05.2012 respectively. Beside these factual grounds, one more objection raised by the defendants that the suit is barred by Section 11 and Order 2 Rule 2 of the Code of Civil Procedure, 1908. Therefore, it is contended by the defendants that there is dispute about which firm is real partnership firm, either defendant No.1 or defendant No.7 and in view of the disposal of earlier suit, the present pursis has of no use and only with intend to delay the proceeding it is filed by the plaintiff.

5. I have gone through the plaint and it appears that defendant No.1 M/s. Rajesh and Associates is an unregistered partnership firm, whereas defendant No. 7 with the same name registered partnership firm and defendant No.8 is one of the partner of that registered firm. Defendants No. 3 to 6 are the partners in unregistered partnership firm i.e. defendant No.1. It is the fact that defendant No. 2 was the partner of defendant No.7 registered partnership firm and right now, he and his wife are no more. I have further perused earlier roznamas of this proceeding, from which it reveals that one person was present on behalf of defendant No.2 and gave undertaking that he will not dispossess the plaintiff and it is noticed by the Court that there are serious allegations of fraud against the said person who represent defendant No.2. Admittedly, there is now dispute between defendant No.1 and defendant No. 7 and 8 regarding the existance of real partnership firm and defendant No.7 is contesting the suit with the help of proviso of Section 11 and Order 2 Rule 2 of the Code of Civil Procedure, 1908.

6. The Predecessor of this Court by taking into consideration the respective pleadings of the parties has long back framed the issues on 21.06.2018 and thereafter, continuously matter is for the cross examination of PW-1. It is also the fact that matter is High Court Time Bound and from time to time, period is extended and now it will be expired on 21.08.2024. Therefore, taking into consideration all above facts and issues involved in the matter, I am of the view that when the defendants No.7 and 8 are contesting the suit, permission cannot be granted for withdrawal against them, so it seems that this is nothing but one delaying tactics of plaintiff to prolong the hearing of the matter.

7. In the result, pursis Exh. 50 is filed on record.

8. Both the parties are directed that to proceed with the pending applications and co-operate the Court in early disposal of the suit within the time given by the Hon'ble High Court.

Date : 01.07.2024

Dictated on : 01/07/2024
Transcribed on : 01/07/2024
Signed on : 01/07/2024

(R. S. Aradhya)
Judge,
City Civil Court,
Mumbai.

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

01.07.2024 at 5.55 p.m.
UPLOAD DATE AND TIME

Mr. S.S. Bathe
NAME OF STENOGRAPHER

Name of the Judge(with CR No.)	HHJ SHRI R. S. Aradhya (C.R.No.62)
Date of pronouncement of Order	01/07/2024
Order signed by P.O. on	01/07/2024
Order uploaded on	01/07/2024