

MHKO090002992014



ORDER BELOW EXH. 70 IN REG. CIVIL SUIT NO. 190/2014

1. The application is filed by the plaintiff for grant of permission to withdraw the suit. The leave is also sought to allow him to file fresh suit. The say is filed and by the say, the defendants strongly resisted the application. It is submitted that the application is filed without any sufficient reason and if the plaintiff want to withdraw the suit, heavy costs shall be imposed. It is further submitted that without any cogent reason, such leave cannot be granted.
2. Heard both the sides and perused Order XXIII of the Code of Civil Procedure. It is regarding withdrawal and compromise. Order XXIII Rule 1 of the Code of Civil Procedure says that on showing sufficient reasons, the court can permit to withdraw the suit. Rule 3 further says that if the court is satisfied that the suit will fail due to any formal defect, the leave can be granted to the plaintiff to file fresh suit. Thus, it is very much clear that there must be sufficient reasons and that are to be shown by the plaintiff. In application Exh. 70, there is no specific pleading as to what is formal defect in the present suit. Mere averment that there is technical error in the pleading cannot show that it is a formal defect. Nature of formal defect and why it occurred

in the pleading is to be explained by the plaintiff. Hence, this application cannot be granted for want of necessary reasons. Accordingly, I pass the following order -

ORDER

1. Application Exh. 70 is rejected.
2. However, the plaintiff is permitted to file detail application for this purpose.

Date : 29.01.2022

(G. V. Deshpande)
Civil Judge Senior Division,
Gadhinglaj