

MHKO110010272022



**Reg. Civil Suit No.142/2022.
(CNR No.MHKO110010272022)**

ORDER BELOW EXH. 22.

(Dilip Salonkhe Vs. Dagadu Bandari and others)

01. The instant application is made by the plaintiff with the prayer to seeking leave to withdrawal the suit.

02. It is further submission of the plaintiff that, he instituted the suit for the relief of perpetual injunction. Defendants filed their written statement. Plaintiff came to know that, there is some technical defect hence suit can not be proceeded. Hence, he made the instant application to seek leave to withdraw the suit and permit them to institute the fresh suit on the same cause of action.

03. Defendants filed their say vide Exh.23. They resisted the application on various grounds. They further submitted that, plaintiff did not mention in the application, what was the technical defect which was cause to make the instant application. Plaintiff instituted the suit only with the intent to harass defendants. They finally submitted to reject the application by imposing compensatory cost of Rs.5000/-.

04. Perused the application. Say thereon. Heard both the parties.

05. Plaintiff did not mention the section or order of C.P.C.

under which he made the instant application. But, on perusing the contention of the application. It is seen that, application is being govern by order XXIII, of C.P.C. On perusing Order XXIII, rule 3, of the C.P.C., it is seen that, it is mandate on the part of the plaintiff to satisfy to the court that, due to some formal defect suit is being effected which will ultimately suit will failed, or plaintiff has to put forth a cause which indicating that, there is sufficient grounds to allowing him to institute a fresh suit for the same cause of action.

06. In the present case in my hand on perusing the entire application plaintiff no where wispered what is the formal defect which affecting to the suit. Plaintiff also failed to put forth any sufficient ground which entitled him to withdraw the instant suit and institute the fresh suit for the same cause of action. Only omnibus statement of the plaintiff that, there is some technical defect in the suit which affecting to the suit is not sufficient to come tot he conclusion that, plaintiff satisfied to the court, about the legal mandate provided under Order XXIII, rule 3, of CPC. Considering above discussion I am of the candid opinion that, the instant application is divert from merit. Hence, I proceed to pass the following order :-

ORDER.

1. Application Exh.22 stands rejected.
2. Application Exh.22 disposed off accordingly.

Peth-Vadgaon
Date. 17/07/2023.

(**L. M. Pathan**)
Civil Judge Jr. Dn., Peth-Vadgaon.