

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

Suit No. 2677 of 2007

Razia A. Shroff & Others

.. Plaintiffs

v/s.

M/s. Nishuvi Corporation & Ors.

..Defendants

Mr.A.A.Kumbhakoni, Sr. Counsel i/b. Adv. Gautam Mehta and Chirag Shah for the Plaintiff.

Mr.Nitin Thakkar, Sr. Counsel with Percy Gandhi, R.J.Majra, P.M.Palshikar i/b.M.G.Gawde for the Defendants

CORAM : R.Y.GANOO, J.

DATED : 1st October , 2010

P.C. :

1. On record I find detail praecipe dated 26.7.2010 and 25.8.2010 by which plaintiffs have prayed for withdrawal of the suit for reasons stated in the said praecipe. Thereafter a further request was made by the Counsel for the plaintiffs for withdrawal of the suit based on the praecipe dated 13.9.2010. Today the matter was on board in the morning session for passing the orders on the strength of these praecipes. After some discussion, learned Counsel for the plaintiffs submitted that plaintiffs would tender new praecipe and apply for

withdrawal of the suit and that plaintiffs will give up earlier praecipes. Based on that, matter was kept at 3.00 p.m. It was again called out at 3.00 p.m. Counsel for the plaintiffs tendered praecipe dated today i.e. 1.10.2010 which reads as under:

“ I am concerned for the plaintiff in the aforesaid matter. Plaintiffs herein have filed Suit No.(L) 505 of 2010 on the same cause of action during the pendency of the present suit. The plaintiffs herein are seeking to withdraw the present suit No.2677 of 2007”

Counsel for the plaintiffs submitted that earlier praecipes be treated as withdrawn and appropriate order be passed on the strength of praecipe dated 1.10.2010. Counsel for the plaintiffs also stated that learned Advocate Mr. Chirag Shah, who has signed this proceeding is appointed as advocate to appear on behalf of the plaintiffs and he submitted that learned Advocate Mr. Chirag Shah is present in the Court. Learned Advocate Mr. Chirag Shah undertook to file appropriate Vakalatnama on behalf of the plaintiffs on or before 19.11.2010.

As of today, following interim proceedings are pending in this Suit. Notice of Motion No.4000 of 2007 being main motion and Chamber

Summons No.1352 of 2009 taken out by the plaintiffs are pending. Motion No.4336 of 2009 termed as purgery notice is taken out by the defendants. Motion No.485 of 2010 is taken out by the defendants for dismissal of the suit on the strength of whatever is stated in the affidavit in support of the said motion.

3. Learned Counsel for the defendant in reply to the submission on behalf of the counsel for the plaintiffs submitted that even if the suit is allowed to be withdrawn as prayed for and the interim proceedings taken out by the plaintiffs are disposed of, the purjery notice taken out by the defendants cannot be disposed of and defendants reserve their right to prosecute the said motion and therefore no order be passed so far as that motion is concerned. In so far as the Notice of Motion No.485 of 2010 he submitted that the Court may pass appropriate order depending upon the orders in the suit.

4. I have noted that the plaintiffs have filed Suit (L) No.505 of 2010. It is mentioned in the praecipe that the same is filed on the same cause of action on the basis of which present suit is filed. I do not wish to investigate the correctness of this submission. The court is merely

concerned with the request made by the plaintiffs as regards withdrawal of the suit. In the said praecipe no other terms and conditions are stated and reading of the said praecipe dated 1.10.2010 shows that the plaintiffs wish to withdraw the suit simplicitor for the reasons best known to them. Since earlier three praecipes are withdrawn, I do not wish to go into the contents of the same and discuss about it. The fact remains that today plaintiffs wish to withdraw the suit. I see no difficulty in granting the permission. I also do not wish to discuss anything as to the effect thereof on Suit (L) 505 of 2010. The plaintiffs take the consequences of withdrawal of this suit so far as S (L) No.505 of 2010. In view of the above, following order is passed.

ORDER

i) Undertaking given by learned Advocate Chirag Shah which is mentioned above is accepted. Plaintiffs are permitted to withdraw the suit. Accordingly suit is allowed to be withdrawn. Plaintiffs to pay to the defendants costs of this suit. Refund of court fees is granted.

ii) Notice of Motion No.4000 of 2007 being the main motion and

Chamber Summons No.1352 of 2009 taken out by the plaintiffs stand disposed of with no orders in view of withdrawal of the suit. There shall be no order as to costs.

iii) Now that the suit is allowed to be withdrawn by the order passed as aforesaid, Notice of Motion No.485 of 2010 taken out by the defendants is also disposed of with no orders, with no order as to costs.

iv) It is clarified that the defendants are free to prosecute Notice of Motion No.4336 of 2009. The same shall remain pending and shall be disposed of in accordance with the provisions of law.

[R.Y.GANOO, J.]