

Beniram and Others

Vs

Gaind and Others

Civil Appeal No. 535 of 1970

(D.A. Desai, R.S. Pathak, A.D. Koshal JJ)

30.07.1981

ORDER

1. We heard Mr. Phadke, learned counsel for the appellant for some time. After the discussion, at a certain stage, a contention was advanced by Mr. Phadke on a particular point in the case and he conceded that it was not the case pleaded in the plaint. At this stage Mr. Phadke wishes to withdraw the suit with liberty to file a fresh suit on the same cause of action or on a different cause of action. Having considered the fact that non-pleading may prove a technical impediment and may result in the dismissal of the appeal which may impede a fresh adjudication if a point is to be made though belated, we consider it just and proper in the interests of justice to permit the appellant-plaintiff to withdraw the suit with liberty to file a fresh suit as stated hereinabove. We accordingly grant the permission subject to the condition that the appellant shall pay Rs. 1000 by way of costs in this Court within two months from today in addition to any costs paid already under the orders of the High Court.

2. As the suit has been withdrawn this appeal becomes infructuous and stands disposed of accordingly. C.M.P. 5669 of 1981 also stands disposed of.

</html