

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION STAMP NO.21402 OF 2015
WITH
CIVIL APPLICATION STAMP NO.21404 of 2015**

**Nav-Swaroop Co-op. Hsg. Soc. Ltd. : Petitioner
versus
M/s. Pradeep Construction
Through its Proprietor
Arun Kumar Sinha : Respondent.**

**Mr. A A Walwaikar for the Petitioner.
Mr. Bhavik Manek a/w Mr. V N Ajikumar for the Respondent.**

**CORAM : R. M. SAVANT, J.
DATE : 31st August 2015**

P.C.

1 The above Petition takes exception to the order dated 29/6/2015 passed by the learned Judge, City Civil Court at Dindoshi (Borivali Division), Goregaon, Mumbai by which order the Respondent who is the original Plaintiff has been allowed to lead secondary evidence in respect of the documents which are mentioned in paragraph 11 of the impugned order.

2 After arguing for sometime, the learned counsel appearing on behalf of the Respondent/Plaintiff on instructions of Shri Arun Kumar Sinha the proprietor of the Respondent makes a statement that the Respondent would withdraw the application for leading secondary evidence i.e. the Notice of Motion No.678 of 2015 and file a proper Notice of Motion setting out the

grounds on which the Respondent/Plaintiff seeks to lead secondary evidence in respect of the documents in question. In view of the said statement, it is not necessary to consider the impugned order on merits. The impugned order dated 29/6/2015 is accordingly set aside. The Respondent/Plaintiff would be entitled to file a fresh application for being permitted to lead secondary evidence. The learned counsel appearing for the Respondent/Plaintiff states that the same would be done within three weeks from date. If any such application is filed within three weeks from date, the Trial Court is directed to consider the same within four weeks thereafter. In view of the fact that the impugned order is set aside on the statement made by the learned counsel for the Respondent/Plaintiff, this Court has not gone into the merits of the case of either side. The application that would be filed by the Respondent/Plaintiff would undoubtedly be tried on its own merits and in accordance with law. All the contentions of the parties are kept open for being urged before the Trial Court. The above Writ Petition is accordingly disposed of. In the event the application is not filed within three weeks, the right to file the same would stand forfeited.

3 In view of the disposal of the above Writ Petition, the Civil Application Stamp No.21404 of 2015 does not service and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]