

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.1478 OF 2015

Bhikan s/o Annaji Gaikawad
and anr.

..Petitioners

Versus

Yashwant s/o Ramchandra Jadhav
since deceased through his
proposed heir and L.Rs
Shobhabai w/o Yashwant Jadhav
and ors.

..Respondents

Mr L.V. Sangit, Advocate for petitioners
Mrs Rashmi S. Kulkarni, Advocate h/f Mr S.S. Kulkarni, Advocate for
respondents No.2A, 2B, 2D to 2F, 3 and 5

CORAM : N.W. SAMBRE, J.

DATE : 30th November 2015

PER COURT

1. Learned Counsel for the respondents Mrs Kulkarni has raised objection on the tenability of present petition, in view of provisions contained in Order 43, Rule 1 (k) of the Code of Civil Procedure, as according to respondents, appeal against the order is tenable against the order impugned resulting into disposal of suit as abated.

2. Mr Sangit would urge that the part of cause of action can be dealt with in the present petition viz., the prayer for condonation of delay.

3. In my opinion, the issues raised can be gone into by the Court below by the Court below while entertaining the appeal.

4. Learned Counsel for the petitioners, makes motion for withdrawal of present petition.

5. In view thereof, the Writ Petition stands disposed of as withdrawn with liberty to prefer appeal against the order.

6. The time spent in prosecuting the present proceedings before this Court be considered while dealing with the issue of condonation of delay.

(N.W. SAMBRE, J.)

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