

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.3326 OF 2015

M/s. J. P. Construction, Sangli through Proprietor
Prakash N. Patil ... Petitioner
Vs.
The State of Maharashtra and ors. ... Respondents

Mr. Manoj A. Patil for Petitioner.
Ms M. S. Bane for Respondents-State.

CORAM : R. G. KETKAR, J.
DATE : 17TH JUNE, 2015

P.C. :

Heard Mr. Patil, learned Counsel for the petitioner and Ms Bane, learned AGP for respondents-State.

2. Mr. Patil submits that as per the order dated 03.03.2015, petitioner filed application for clarification of the impugned order dated 19.01.2015 passed by the learned District Judge-1, Jaysingpur. By order dated 28.04.2015, this Court directed the learned District Judge to dispose of the application for clarification as expeditiously as possible and in any case on or before 10.05.2015. In pursuance thereof, the learned District Judge has clarified the order on 07.05.2015. Mr. Patil seeks leave to amend this Petition so as to raise challenge to that order. Since the said order is passed during the pendency of this Petition and as per the direction of this Court, leave to amend is granted. Amendment shall be carried out forthwith.

3. Perusal of the impugned orders dated 19.01.2015 and 07.05.2015 shows that the learned District Judge had disposed of Regular Civil Appeal No.90 of 2013 and permitted both the parties to file separate application for the reliefs claimed in applications at exhibits-17, 21 and

23. Having regard to the fact that the orders are referable to Rule 23-A to Order 41 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), in my opinion, petitioner has statutory remedy of Appeal from Order under Order 43, Rule 1(u) C.P.C. Mr. Patil, therefore, seeks permission to withdraw this Petition with a liberty to file Appeal from Order under Order 43, Rule 1(u) C.P.C. He further submits that the time spent by the petitioner from 05.02.2015 (date of filing of Petition) may be excluded while considering the application for condonation of delay.

4. In view thereof, on the motion made by Mr. Patil, Petition is allowed to be withdrawn with liberty as prayed for. It will be open to the petitioner to take out application in case there is delay in filing the Appeal by explaining the delay on the ground that he was prosecuting bonafide Petition in this Court.

(R. G. KETKAR, J.)

Minal Parab