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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6592 OF 2014

Mrs.Pushpa Shankar Satpute .. Petitioner

Vs.

Dinkar Kallappa Kamble
Since deceased through legal heirs
1. Pravin Dinkar Kamble and others .. Respondents

Mr.Surel S.Shah, Advocate for the Petitioner.
Mr.Gajanan M.Savagave, Advocate for the Respondents.

CORAM : R. G. KETKAR, J.
DATE : 31st JULY, 2015

P.C. :

. Heard Mr.Surel S.Shah, learned Counsel for the petitioner and Mr.Gajanan M.Savagave, learned Counsel for the respondents.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to original plaintiff has challenged the judgment and order dated 25/02/2015 passed by the learned District Judge - I Jaisingpur below Exhibit 25 in Regular Civil Suit No. 51 of 2007. By that order, the learned District Judge rejected the application taken out the plaintiff for setting aside order dismissing the Regular Civil Appeal No. 51 of 2007 in default. On 24/02/2014, learned District Judge dismissed the Appeal in default.

3. In my opinion, the impugned order passed by the learned District Judge is under Order 41 Rule 19 of Code of Civil Procedure, 1908 (for short 'C.P.C.'). The petitioner, therefore, has an equally efficacious alternate statutory remedy under Order 43 Rule 1(t) of C.P.C. In other words, petitioner can exhaust remedy by filing Appeal From Order challenging the impugned order. In view thereof, Mr.Shah seeks permission withdraw this Petition with liberty to file Appeal From Order. He submits that time spent in prosecuting this Petition bonafide may be excluded.

4. In view thereof, Petition is allowed to be withdrawn with liberty as prayed for. If there is any delay in filing the Appeal, petitioner is at liberty to take out application and apply for excluding time spent in prosecuting this Petition bonafide. It is made clear that I have not expressed any opinion on merits of the matter. All the contentions of the parties are expressly kept open.

(R. G. KETKAR, J.)