

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3252 OF 2014

Vijay Laxminarayan Agarwal ... Petitioner
Vs.
Adishwar Jain Shwetamber Trust & others ... Respondents

Mr. Sanjay Kshirsagar for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 11TH JUNE, 2015

P.C. :

Heard Mr. Kshirsagar, learned Counsel for petitioners.

2. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the order dated 17.09.2013 passed by the learned Civil Judge, Junior Division (P.C.M.C.) Akurdi, Pune below exhibit-1 in Regular Civil Suit No.5 of 2011. By that order, the learned trial Judge directed the petitioners to value the relief of mandatory injunction for Rs.15,85,300/- till 07.10.2013 and on correction of the valuation, petitioners were directed to pay the requisite Court fees on such valuation.

3. Mr. Kshirsagar submitted that since the compliance of order dated 17.09.2013 was not made, by order dated 04.01.2014, the learned trial Judge rejected the plaint under Order VII, Rule 11(b) of the Code of Civil Procedure, 1908 (for short 'C.P.C.'). Aggrieved by that decision, petitioners have preferred substantive First Appeal and the same is pending. He submits that petitioners may be permitted to withdraw this Writ Petition with a liberty to challenge the impugned order dated 17.09.2013 in the pending Appeal.

4. In view thereof, Petition is allowed to be withdrawn with liberty as prayed for. In case the petitioners have not raised challenge to the impugned order in the pending Appeal, petitioners are at liberty to amend the said memo incorporating challenge to the impugned order as contemplated by Section 105(1) C.P.C.

5. Petition is allowed to be withdrawn in the aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)

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