

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.5590 OF 2015

Irgonda Balgonda Patil and others                      ...      Petitioners  
Vs.  
Dhulgonda Balgonda Patil and others                      ...      Respondents

Mr. Manoj A. Patil for Petitioners.

**CORAM : R. G. KETKAR, J.**  
**DATE : 26<sup>TH</sup> JUNE, 2015**

**P.C. :**

Not on Board. At the request of Mr. Patil, learned Counsel for petitioners, taken up in the production Board.

2. Leave to amend so as to raise challenge to the order dated 18.03.2014 is granted. Amendment shall be carried out forthwith.

3. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 18.03.2014 by which the appeal preferred by the petitioners was dismissed for want of further steps with direction to pay costs of Rs.1,000/- to the respondent No.1. Petitioner thereafter filed application for recalling the order dated 18.03.2014 and the said application was rejected by order dated 26.09.2014, which is also challenged in the present Petition.

4. Having regard to the fact that for want of taking steps, the learned District Judge dismissed the Appeal itself, in my opinion, Writ Petition is not maintainable. Petitioner has to file substantive Second Appeal in this Court. In view thereof, Mr. Patil seeks permission to withdraw this Petition with liberty to file Second Appeal challenging the impugned orders.

5. On the motion made by Mr. Patil, Petition is allowed to be withdrawn with liberty as prayed for. It is made clear that I have not examined merits of the case. All contentions, on merits, of the parties are expressly kept open. Order accordingly.

**(R. G. KETKAR, J.)**

*Minal Parab*