

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6446 OF 2014

Gillan Framroze Irani
(Since deceased by his
heirs) & ors.

.. Petitioners

vs.

The State of Maharashtra and ors.

.. Respondents

Mr. K.Y. Mandlik a/w. H. Doctor for the Petitioners.
Mr. A.R. Metkari, AGP for Respondent Nos.1 to 3.
Mr. A.B. Tajane for Respondent No.4.
Ms Sunanda Kumbhat for Respondent No.5.

CORAM : M. S. SONAK, J.

DATE : 1 April, 2015.

P.C. :-

1] This petition challenges the order dated 7 January 2014 made by the 6th Joint Civil Judge, Senior Division, Pune rejecting the plaint as against the original defendant No.5.

2] There is no dispute that the aforesaid order came to be made upon an application under Order 7 Rule 11 of the CPC taken out by the defendant No.5. The provisions of the Order 23 of the CPC were also pressed into service.

3] Section 2(2) of the CPC provides that a decree shall *inter alia* deemed to include the rejection of a plaint.

4] In view of the aforesaid, there is no question of entertainment of the present petition, as the remedy available to the petitioners

would be to file an appeal against the impugned order.

5] Accordingly, the present petition is dismissed. However, this shall not preclude the petitioners from instituting an appeal against the impugned order. In case, the petitioners institute an appeal against the impugned order, within four weeks from today, then the Appeal Court shall take into consideration the circumstance that the petitioner had been *bona fide* pursuing its remedy as against the impugned order by way of prosecuting the present petition.

6] It is clarified that this Court has not gone into the merits of the matter and therefore, all the contentions of all parties with regard to the impugned order kept open for decision by the Appeal Court, should the petitioners institute an appeal against the impugned order.

7] With the aforesaid observations, this petition is dismissed. There shall be no order as to costs.

8] All parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)