

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.972 OF 2016**

Shri Subhash Shankarrao Adwal Petitioner  
Vs  
Shri Nivrutti Genu Balwadkar  
and Ors .. Respondents  
Mr. Rampal Singh Kohli, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.  
DATE : 26/02/2016

**PC:**

1. Heard Mr. Rampal Singh Kohli, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 5.11.2015 passed by the learned 6<sup>th</sup> Jt. Civil Judge, Jr. Dn, Pune, below Exhibit- 73 in Regular Darkhast no.136 of 2011. By that order, the learned trial Judge allowed the application Exhibit 73 taken out by judgment debtor no. 9 and issued injunction restraining all the parties in Darkhast from carrying out any construction activity till shares are physically separated by metes and bounds.
3. Mr.Kohli submitted that Darkhast is filed in the year 2011 and for more than four years the Darkhast is pending. He submitted that in paragraph 5 of the impugned order, the learned trial Judge recorded that the matter was fixed for argument on the report of T.I.L.R. at Exhibit 49. He invited my attention to prayer made in Darkhast. The only prayer made in Darkhast is

that the property described in Execution Petition is not yet measured as per compromise decree. It is, therefore, necessary to get the said property/land measured through Collector. It was, therefore, prayed that partition of suit lands may be effected as per the compromise decree through the Collector, Pune and precept may be sent to the Collector for effecting partition as per compromise decree. He, therefore, submitted that the executing court may be directed to dispose of the Darkhast in a time bound manner.

4. Mr. Kohli seeks permission to withdraw the Petition on the ground that against the impugned order, the petitioner has an equally efficacious alternate statutory remedy of Appeal.

5. In view thereof, on the motion made by Mr.Kohli, Petition is allowed to be withdrawn.

6. The petitioner is at liberty to take out application for disposing of the Darkhast proceedings in a time bound manner. If such application is made, having regard to the prayer made in the execution proceedings as also finding recorded in paragraph 5 of the impugned order that the matter was fixed for argument on the report of T.I.LR. Exh.49, the learned trial Judge is requested to pass appropriate order on the application for disposing the Darkhast proceedings in a time bound manner. Order accordingly.

(R.G.KETKAR, J.)