

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13104 OF 2016

Rehana Mohammed Aleem Khan and another ... Petitioners
Vs.
Mohammed Naim Khan Yasin Khan and others ... Respondents

Mr. G. S. Godbole, Senior Advocate i/b. Ms Chaitrali Anand Deshmukh for
Petitioners.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 30, 2016

P.C. :

Heard Mr. Godbole, learned Senior Counsel for petitioners at
length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants No.10 and 11', have challenged the judgment and order dated 23.09.2016 passed by the learned Civil Judge Senior Division, Thane below exhibit-105 in Special Civil Suit No.278 of 2005. By that order, the learned trial Judge rejected the application made by defendants No.10 and 11 for setting aside ex-parte order dated 22.11.2013. The learned trial Judge relied upon the decision of the Apex Court in the case of **Arjun Singh Vs. Mohindra Kumar and others, AIR 1964 SC 993** and held that the Suit was fixed for judgment, and therefore, application filed by defendants No.10 and 11 under Order IX, Rule 7 of C.P.C. was not maintainable.

3. Mr. Godbole states that husband of petitioner No.2, Mr. Mohammed Aleem Nizamuddin Siddiqui is present in the Court. He has tendered photocopy of his Aadhar card, which is taken on record and marked 'X' for identification. Upon taking instructions from him, he

seeks permission to withdraw this Petition with liberty to file substantive appeal in case the Suit is decided against defendants No.10 and 11. He further states that defendants No.10 and 11 will file application for leading evidence in rebuttal and for that purpose will examine the Bailiff who has submitted the report at exhibit-68 to prove that the suit summons was not served on them, in any appeal that may be filed against the decision in Special Civil Suit No.278 of 2005.

4. On the motion made by Mr. Godbole, Petition is allowed to be withdrawn with liberty as prayed for. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab