

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1107 OF 2016

1. Narendra D.Dave (HUF Karta) ..Petitioners.
and Anr.

Vs

1. M/s. Mark Constructions and .. Respondents
Ors.

Mr. M.L.Palan i/b Mr. V.K.Gupta, Advocate for Petitioners.

Mr. Surel Shah i/b Mr. Vaibhav Mehta & Associates, Advocates for
Respondents No. 1 and 2.

Mr Anilkumar K Patil, Advocate for Respondent no.3.

CORAM : R.G.KETKAR,J.

DATE : 05/10/2016

PC:

1. Heard Mr.M.L.Palan, learned counsel for the petitioners and Mr. Surel Shah, learned counsel for the respondents at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 6.11.2015 passed by the learned Judge presiding over Court room no.20 of the Court of Small Causes, Mumbai below Exhibit-28 in L.E.C.Suit No.58/65 of 2014. By that order, the learned trial Judge partly allowed the application made by the petitioners, hereinafter referred to as 'plaintiffs', and directed defendants no. 1 to 4 to jointly and severally pay Rs.20,000/-

towards compensation amount. Defendants no. 1 to 4 are jointly directed to pay said sum from 1.11.2012 till 31.10.2015 and further go on paying the amount at the same rate till disposal of the suit on or before 5th day of every succeeding month. The learned trial Judge directed payment to be made within two months from the date of the order.

3. Mr.Shah raised preliminary objection as regards maintainability of the petition. He submitted that against the order passed by the learned trial Judge, the petitioners have an equally efficacious alternate statutory remedy by way of revision application. In view thereof, Mr. Palan states that the petitioners will file revision application within one week from today and serve copy on the other side during this period. He submitted that the revision application to be filed by the petitioners and the revision application no.51 of 2016 may be heard and disposed of together. He further submits that while deciding the revision applications, the Appellate Court may be directed to consider clause 16 of Leave and Licence Agreement dated 6.8.2013.

4. In view thereof, Petition is allowed to be withdrawn with liberty as prayed for. The petitioners shall institute revision application within one week from today and serve copy on the other side during this period. The Appellate Court will exclude the time spent by the petitioners in prosecuting this petition

while considering the issue of condonation of delay, if any. While deciding the revision application, the Appellate Court will also consider clause 16 of Leave and Licence Agreement dated 6.8.2013. Parties agree that they will appear before the Appellate Court on 17.10.2016 and for that purpose no fresh notice be issued to them. All contentions of the parties in that regard are expressly kept open.

5. Parties including Appellate Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)