

Anand

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

WRIT PETITION NO.138 OF 2016

Sayaji Parvati Rane & ors.

.Petitioners

Vs.

The State of Maharashtra & ors.

.Respondents

Mr.Rahul S. Kadam, Advocate, for the Petitioners

Mr.Swapnil Mhatre i/b. Mr.S.S.Kulkarni, Advocate, for the Respondents
No.4(a) to 4(f) & 5

CORAM : R.G.KETKAR, J.

DATE : 23.03.2017

P.C.

. Heard Mr. Kadam, learned counsel for the Petitioners and
Mr.Mhatre, learned counsel for the Respondents.

2. By this Petition under Article 227 of the constitution of India, the Petitioners have challenged the Judgment and Order dated 15.12.2015 passed by the learned Ad-hoc District Judge-2, Pune below Exh.4 in Civil Appeal No.462 of 2015. By that order, the learned District Judge rejected the Application Exh.4 made by the Petitioners for injunction restraining Respondents from disturbing their possession as also from creating any third party interest.

3. It is not in dispute that R.C.S.No.270 of 2004 was

dismissed by the learned trial Judge on 10.08.2015. Aggrieved by that Order, the Petitioners have instituted substantive Appeal under Section 96 of the Code of Civil Procedure, 1908 (For short “CPC”) in the District Court. Pending the Appeal, they took out an Application for injunction which is rejected. In view of Section 106 r/w. Order XLIII, Rule 1(r) of CPC, Plaintiffs have alternate efficacious statutory remedy of filing Appeal from Order in this Court against the impugned Order.

4. In view thereof, on the motion made by Mr. Kadam, Petition is allowed to be withdrawn with liberty to the Petitioners to file Appeal from Order. As Petition is instituted on 04.01.2016 challenging the Order dated 15.12.2015, time spent by the Petitioners in prosecuting this Petition from 04.01.2016 till today shall be excluded while considering the question of limitation.

5. Mr. Kadam assures that within two weeks from today, Petitioners will file Appeal from Order in this Court. In view thereof, status-quo continued by this Court on 20.06.2016 shall remain in force with express understanding that no further extension is sought.

(R.G.KETKAR, J.)