

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1660 OF 2017**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Ms.Riba Vasudevan i/b. Neeta Karnik,
Advocate for Petitioner.

CORAM : R. G. KETKAR, J.

DATE : 10/02/2017

P.C.:

1. Not on board. At the request of Ms.Vasudevan taken up in the production board.
2. Heard Ms.Riba Vasudevan, learned Counsel for the petitioner.
3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff' has challenged the judgment and order dated 7.10.2016 passed by the learned 2nd Jt. Civil Judge, Senior Division, Kalyan below Exhibit-79 in Special Civil Suit NO.50/2016. By that order, the learned trial Judge rejected the application filed by the plaintiff under Order XXXIX Rule 11 of C.P.C. for striking out the defence of the defendants.
4. Order XLIII Rule 1(r) was amended on

22.6.2009 vide High Court Notification No.Rule/P.0102/77. Said amended provision read thus:

“(r) An order under rule 1, rule 2, rule 2-A where disobedience or breach of injunction is held proved or attachment of property is ordered, rule 4, rule 10 or rule 11 of Order XXXIX”

5. In view of amended Order XLIII Rule 1(r), the petitioners have an equally efficacious alternate statutory remedy of filing Appeal From Order / Misc. Civil Appeal challenging the impugned order. Ms. Vasudevan, therefore, seeks permission to withdraw this Petition with liberty to file Appeal From Order /Misc. Civil Appeal.

6. In view thereof, on the motion made by Ms. Vasudevan, Petition is allowed to be withdrawn with liberty as prayed for. Office is directed to return the certified copies, if any filed by the petitioner. It is made clear that I have not examined the merits of the case. Order accordingly.

(R. G. KETKAR, J.)