

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

WRIT PETITION NO. 7563 OF 2016

Mr. Anil Babu Patil and Anr.

..Petitioners.

Vs

Mr. Babu Janu Patil and Ors

.. Respondents

Mr. Sandesh Patil a/w Mr. C.Y.Shah, Advocate for Petitioners.
Ms. Bhakti N. Deshpande a/w V.A. Navale, Advocate for
Respondent No.13.

CORAM : R.G.KETKAR,J.

DATE : 13/01/2017

PC:

1. Not on Board. At the request of Mr.Patil, taken up for admission. Heard Mr. Sandesh Patil, learned counsel for the petitioners and Ms. Bhakti Deshpande, learned counsel for respondent no.13.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged the Judgment and order dated 4.11.2015 passed by the learned Jt. Civil Judge, Senior Division, Thane below Application-Exhibit 59 in Special Civil Suit No. 457 of 2015. By that order, the learned trial judge rejected the application made by the plaintiffs under section 9-A (2) of C.P.C. for grant of injunction. Pending the suit, the plaintiffs filed application at Exhibit-5 for temporary injunction. Defendants filed application under section 9-A for framing issue of jurisdiction. The plaintiffs,

therefore, took out application Exhibit-59 under section 9-A(2) for injunction restraining defendant no.13 from carrying out any construction activities over plots no. 41, 42 and 43. By the impugned order, the learned trial Judge has rejected Exhibit-59. Perusal of the prayers made in application Exhibit-59 filed by the plaintiffs under section 9-A(2) shows that the prayers are referable under section 39, Rules 1 and 2 of C.P.C. In view of Order 43, Rule 1(r), the plaintiffs have an equally efficacious alternate statutory remedy of filing appeal under Order 43, Rule 1(r).

3. In view thereof, Mr. Patil seeks permission to withdraw this Petition with liberty to file Appeal under Order 43 Rule 1(r). Ms Deshpande has no objection.

4. In view thereof, on the motion made by Mr. Patil, Petition is allowed to be withdrawn and is disposed of as such.

5. It is made clear that I have not examined merits of the case. The time spent by the petitioners in prosecuting this petition from 15.1.2016 till date shall be excluded. Order accordingly.

(R.G.KETKAR, J.)