

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2035 OF 2017

Rehana Abdul Gani Cheulkar (decd) through LRs
Fehmina Mehboob Pathan and others ... Petitioners
Vs.
Alisaheb Jasuddin Bharmar (decd) through LRs
Abdul Aziz Alisaheb Bharmar and others ... Respondents

Mr. Abhishek Patil for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 15, 2017

P.C. :

Not on Board. At the request of Mr. Patil, learned Counsel for petitioners, taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs-appellants', have challenged the judgment and order dated 15.10.2016 passed by the learned District Judge-4, Thane in Civil Appeal No.239 of 2016. By that order, the learned District Judge dismissed the application exhibit-5 taken out by the plaintiffs-appellants for restraining the defendants from creating third party interest.

3. By order dated 20.07.2016, the learned trial Judge dismissed the Suit on the ground that it is barred by limitation. Aggrieved by that order, plaintiffs preferred substantive appeal under Section 96 of the C.P.C. Pending that Appeal, they took out application exhibit-5 for restraining the defendants from creating third party interest. By the impugned order, the learned District Judge has rejected the application. In view of Section 106 read with Order XLIII, Rule 1(r) of the Code of Civil Procedure, 1908, petitioners have an equally, efficacious, alternate

statutory remedy of filing Appeal from Order in this Court. In view thereof, Mr. Patil seeks permission to withdraw this Petition with liberty to file Appeal from Order.

4. On the motion made by Mr. Patil, Petition is allowed to be withdrawn with liberty as prayed for. Office is directed to return the certified copies to the petitioners. It is made clear that I have not examined the merits of the case.

(R. G. KETKAR, J.)

Minal Parab