

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7390 OF 2016

High Class Builders (P) Limited through its Director
Ashish V. Agarwal ... Petitioner
Vs.
Nitin Arun Joshi and another ... Respondents

Mr. Tejas D. Deshmukh for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 02, 2017

P.C. :

Heard Mr. Deshmukh, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the judgment and order dated 11.09.2014 below exhibit-93 passed by the learned 4th Joint Civil Judge, Senior Division, Pune as also the judgment and order dated 06.01.2016 below exhibit-96 passed by the learned 3rd Joint Civil Judge, Senior Division, Pune in Special Civil Suit No.1484 of 2011. By order dated 11.09.2014 below exhibit-93, the learned trial Judge rejected the application made by the defendant for setting aside no cross order. Defendant filed application under Section 114 read with Section 151 and Order 47 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for review of the order dated 11.09.2014. By order dated 06.01.2016, the learned trial Judge rejected the review application.

3. Matter was heard at length on 01.02.2017 and was kept today so as to enable Mr. Deshmukh to obtain instructions as to whether defendant is pressing this Petition. Upon taking telephonic instructions from the instructing Advocate of the defendant, Mr. Deshmukh states

that petitioner-defendant is not pressing this Petition. He has instructions to withdraw this Petition.

4. In view thereof, on the motion made by Mr. Deshmukh, Petition is allowed to be withdrawn and is dismissed as withdrawn. However, it is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proceedings as contemplated by Section 105(1) of C.P.C. Order accordingly.

(R. G. KETKAR, J.)

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