

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1880 OF 2016

(Zakir Hussain J. Patel Vs. Kamruddin I. Patel and others)

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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Mr. Rahul P. Walvekar for Petitioner.

CORAM : R. G. KETKAR, J.

DATE : 23RD FEBRUARY, 2017

P.C.:

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

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.3', has challenged the order dated 06.04.2015 passed by the learned 13th Joint Civil Judge, Junior Division, Kolhapur below exhibit-68 in Regular Civil Suit No.575 of 2008. By that order, the learned trial Judge struck down the defence of defendant No.3 as per Order XXXIX, Rule 11 of the Code of Civil Procedure, 1908 (for short 'C.P.C.').

3. Mr. Walvekar submitted that by High Court Notification dated 22.06.2009, Order XLIII, Rule 1(r) of C.P.C. is amended and order passed under Order XXXIX,

Rule 11 is appealable. Amended Order XLIII, Rule 1(r) of C.P.C. reads 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 1 of Order XXXIX.”

4. Mr. Walvekar, therefore, seeks permission to withdraw this Petition with liberty to file Miscellaneous Civil Appeal / Appeal from Order in the District Court. He submitted that Writ Petition was instituted on 27.04.2015.

5. In view thereof, on the motion made by Mr. Walvekar, Petition is allowed to be withdrawn. The time spent by the petitioner in prosecuting this Petition from 27.04.2015 till today shall be excluded while considering the application for condonation of delay. Office is directed to return the certified copies, if any, filed by the petitioner. It is made clear that I have not examined merits of the case. Order accordingly.

(R. G. KETKAR, J.)

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