

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9852 OF 2014

(Likayat Abdul Karim Sayyed through POA Holder Abdul Karim Abbas Sayyed and others Vs. Ayub Siddiqui Mulla)

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. Nitin P. Deshpande for Petitioners.
Mr. S. S. Patwardhan for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 23RD FEBRUARY, 2017

P.C.:

Heard Mr. Deshpande, learned Counsel for petitioners and Mr. Patwardhan, learned Counsel for respondent No.1.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 25.07.2014 passed by the learned Civil Judge, Junior Division (P.M.C.), Pune in Miscellaneous Application No.907 of 2011. By that order, the learned trial Judge rejected the application made by the plaintiffs under Order XXXIX, Rule 2-A of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for initiating actions against respondent No.1 for committing breach of the order dated 02.09.2010 passed by the learned trial Judge below exhibits-5 and 8 in

Regular Civil Suit No.626 of 2010. In view of the amendment of Order XLIII, Rule 1(r) of C.P.C. as per High Court Notification dated 22.06.2009, petitioners have an equally efficacious, alternate, statutory remedy of filing Miscellaneous Civil Appeal / Appeal from Order. Amended Order XLIII, Rule 1(r) 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. In view thereof, Mr. Deshpande, seeks permission to withdraw this Petition with liberty to file Miscellaneous Civil Appeal / Appeal from Order. He further submitted that aggrieved by the impugned decision, plaintiffs instituted Writ Petition in this Court on 16.09.2014. The time spent by the petitioners in prosecuting this Petition till today may be excluded.

5. In view thereof, on the motion made by Mr. Deshpande, Petition is allowed to be withdrawn with liberty as prayed for. The time spent by the petitioners in prosecuting this Petition from 16.09.2014 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 petitioners. It is made clear that I have not examined merits of the case. Order accordingly.

(R. G. KETKAR, J.)