

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10556 OF 2016**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mr.Mahendra Shingade, Advocate for Petitioners.

CORAM : R. G. KETKAR, J.

DATE : 02/02/2017

P.C.:

1. Not on board. At the request of Mr.Shingade taken up for admission.
2. Heard Mr.Mahendra Shingade, learned Counsel for the petitioners.
3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants No.4, 6 and 7', have challenged the judgment and order dated 20.8.2016 passed by the learned Civil Judge, Senior Division, Malshiras below Exhibit-192. By that order, the learned trial Judge allowed the

application filed by the plaintiff under Order XXXIX Rule 11 of C.P.C. for striking out on the ground that despite order of status quo the defendants have carried out the construction. Order XLIII Rule 1(r) was amended on 22.6.2009 vide High Court Notification No.Rule/P.0102/77. Said amended provision read 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 11 of Order XXXIX”

4. In view of amended Order XLIII Rule 1(r), the petitioners have an equally efficacious alternate statutory remedy of filing Appeal From Order / Misc. Civil Appeal challenging the impugned order.

5. Mr.Shingade states that the matter before the trial Court is kept on 4.2.2017 for cross-examination of plaintiff's witness. He submits that the time spent by the petitioner in prosecuting this Petition from 3.9.2016 till date may be excluded while considering the application for condonation

of delay. In view thereof, on the motion made by Mr. Shingade, the Petition is allowed to be withdrawn with liberty to file Misc. Civil Appeal / Appeal From Order as per amended Order XLIII Rule 1(r) of C.P.C. Office is directed to return the certified copies, if any filed by the petitioners. The time spent by the petitioner in prosecuting this Petition from 3.9.2016 till today shall be excluded in case the appeal is preferred within two weeks from today. Order accordingly.

(R. G. KETKAR, J.)