

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12760 OF 2016**

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. Viral Shukla i/b. Shukla & Asso. for the Petitioner.

CORAM : R. G. KETKAR, J.

DATE : 27/02/2017

P.C.:

1. Not on board. At the request of Mr.Shukla taken up for admission.
2. Heard Mr.Viral Shukla, learned Counsel for the petitioner.
3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'defendant', has challenged the judgment and order dated 15.10.2016 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No.2104/2016 in disposed of S.C. Suit No.10194/1987. By that order, the learned trial Judge dismissed the Motion taken out by the defendant under Order IX Rule 13 of C.P.C.
4. In view of Order XLIII Rule 1(d) of C.P.C.,

the defendant has an equally efficacious alternate statutory remedy of filing Appeal From Order. In view thereof, Petition is allowed to be withdrawn with liberty as prayed for. The time spent by the defendant in prosecuting this Petition from 20.10.2016 till date shall be excluded while considering the application for condonation of delay. Registry is directed to return the certified copies, if any, filed by the petitioner. It is made clear that I have not examined the merits of the case.

5. Mr.Shukla states that within one week from today the petitioner will file Appeal From Order. He further states that ad-interim order directing the respondents to give ten working days' notice before proceeding to execute the decree may be continued for a period of one week from today. In view thereof, notwithstanding withdrawal of the Petition, if the respondents are proceeding to execute the decree, they will give ten working days' notice to the petitioner. Order accordingly.

(R. G. KETKAR, J.)