

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 2429 OF 2017**

NARAYAN KHARBHARI BANDRE THROUGH IT'S GPA  
YOGESH NARAYAN BANDRE  
VERSUS  
KARBHARI KASHINATH BANDRE AND ANOTHER

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Advocate for Petitioners : Mr. Bedre Vinayak Sudhakar  
Advocate for Respondent 1 : Mr R R Karpe

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**CORAM : V.K. JADHAV, J.**

**Dated: January 31, 2018**

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**PER COURT :-**

1. Heard finally with consent at admission stage.
2. The petitioner/plaintiff has instituted the suit bearing Regular Civil Suit No.37/2004 for recovery of possession. After the initial judgment and decree when challenged before the First Appellate Court, matter was remanded and thereafter, the trial court by judgment and decree dated 2.9.2013 dismissed the suit for want of jurisdiction. Being aggrieved by the same, the petitioner/plaintiff has preferred R.C.A. No.50/2013 before the District Court, Shrirampur. In the said pending appeal, the petitioner/plaintiff has filed an

application exh.13 for withdrawal of the said appeal with a liberty to move the appropriate authority. The learned District Judge-2, Shrirampur by impugned order dated 19.8.2016 though permitted to withdraw the appeal, however, refused to grant liberty. The learned District Judge has observed that, no such liberty is required and the petitioner/plaintiff may approach the appropriate authority for redressal of his grievance, if any.

3. Learned counsel for the petitioner submits that, this writ petition has been preferred to the limited extent that the petitioner/plaintiff has instituted the suit way back in the year 2004 and finally in the year 2016 due to findings recorded by the trial court dismissing the suit for want of jurisdiction, the petitioner/plaintiff constrained to file an application exh.13 for withdrawal of the appeal with liberty to move the appropriate authority and, if, such liberty is granted and, if the authority is directed to consider the time spent in pursuing the remedy, then the question of

limitation would be considered in favour of the petitioner.

4. Learned counsel for respondent submits that, the petitioner has filed said application exh.13 under Order 23 Rule 1 of Civil Procedure Code. In fact, such an application can be filed for the purpose of institution of a separate suit and not for the purpose of approaching the appropriate authority. Further, the lower appellate Court has rightly observed that no liberty is required to approach the appropriate authority having jurisdiction to entertain the petition if preferred by the petitioner. Learned counsel submits that, in view of the same, there is no substance in this writ petition.

5. It appears that, the trial court, after full-fledged trial of the suit, recorded finding in the negative and held that, civil court has no jurisdiction to grant relief of possession in favour of the petitioner/plaintiff. Being aggrieved by the same, though the petitioner/plaintiff has filed R.C.A. No.50/2013, filed the application at

exh.13 seeking permission to withdraw the appeal as well as the suit to approach the appropriate authority. It is true that, in such a case, if the petitioner has pursued the remedy wrongly, then, the authority may consider the time spent in pursuing said remedy while deciding the question of limitation, if arises in approaching the appropriate authority. The learned District Judge has granted permission to withdraw the appeal, however, refused to grant any liberty. The impugned order is thus modified to the extent that if the petitioner approaches the appropriate authority seeking redressal of his grievance, said appropriate authority may consider the time spent in pursuing the remedy before the Civil Court while deciding the question of limitation. With the above directions/observations, writ petition is disposed of. No costs.

**( V.K. JADHAV, J. )**

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