

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13872 OF 2017

The Greater Bombay Co-operative Bank Limited ... Petitioners
Vs.
Sachit Dinkarraai Joshi and another ... Respondents

Mr. Rishab Shah i/b. Mr. Raval Shah for Petitioners.
Mr. Vaibhav Mehta a/w. Mr. Nitesh Pandey i/b. Vaibhav Mehta & Asso.
for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JUNE 26, 2018

P.C. :

Heard Mr. Shah, learned Counsel for the petitioners and
Mr. Mehta, learned Counsel for the respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 10.10.2016 below exhibit-49 in R.A.D.Suit No.1710 of 2005 passed by the learned Judge, Court Room No.17 of the Court of Small Causes at Mumbai. By that order, the learned trial Judge has rejected the application filed by petitioners, hereinafter referred to as 'defendant No.2', for vacating the ad-interim order dated 01.12.2005 and keeping in abeyance order dated 29.04.2009. Prayers (a) and (b) of that application are to the following effect:

- (a) That this Hon'ble Court may be pleased to vacate the abeyance Order granted vide order dated 29.04.2009 being Exhibit "A" hereto.
- (b) That this Hon'ble Court may be pleased to set aside the ex-parte order granted vide order dated 01.12.2005 being Exhibit "E" hereto.

3. Mr. Mehta raised preliminary objection that in so far as the prayer

(a) is concerned, petitioners have an equally efficacious remedy of filing revision before the Appellate Bench of the Small Causes Court. In so far as prayer (b) is concerned, that application is referable to Order XXXIX, Rule 4 of C.P.C. for vacating the ex-parte order. In view of Order XLIII, Rule 1(r), petitioners have remedy of filing appeal before the Appellate Bench of the Small Causes Court.

4. Realizing this difficulty, Mr. Shah seeks permission to withdraw this Petition with liberty to file appropriate proceedings before the Small Causes Court. He assures that within two weeks from today, petitioners will file appropriate proceedings. He submitted that the time spent by the petitioners in prosecuting this Petition from 11.01.2017 till date may be excluded.

5. In view thereof, on the motion made by Mr. Shah, Petition is allowed to be withdrawn and is disposed of as such with liberty to adopt appropriate proceedings before the Appellate Bench of the Small Causes Court. If the petitioners institute the proceedings within two weeks from today, the time spent by them in prosecuting this Petition from 11.01.2017 till date shall be excluded while considering the issue of condonation of delay. Order accordingly.

(R. G. KETKAR, J.)

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