

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION No.13723 OF 2017**

Cosmos Textile Mills Pvt. Ltd. & Ors.

... Petitioners

Vs.

M/s.Dhanesh & Co.

... Respondent

Mr.Mihir Govilkar with Kunal Nawale i/b Govilkar & Asso. for the  
Petitioners

None for the Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.  
DATED: AUGUST 2, 2018**

**P.C. :**

1. Upon urgent mentioning, taken on Production Board.
2. This petition is filed challenging the order of conditional leave dated 19.1.2017 passed by the learned Judge of the City Civil Court, Dinodoshi in Summons for Judgment No.52 of 2014 in Summary Suit No.61 of 2014. The petitioner is a defendant in the said suit.
3. Learned Counsel for the petitioners submits that the said suit is now decreed on 24.4.2018. He pointed out that in view of the judgment of the Bombay High Court in the case of **Emkay Exports, Mumbai & anr. vs. Madhusudan Shrikrishna<sup>1</sup>**, he

---

1 (2008) 4 Mah.L.J. 843 (FB)

wants to withdraw the Writ Petition with liberty to challenge the same order before the appellate Court as the suit is decreed.

4. In the case of **Emkay Exports, Mumbai & anr. (supra)**, the Full Bench of this Court has laid down the principle of law as follows:

“41. In view of our above detailed discussion while concluding, we state the principle of law as under:-

“Propriety, legality or correctness of an interlocutory order granting conditional leave or refusing leave to defend the Suit could be challenged by the aggrieved party in an appeal preferred against the final decree provided that the party had not unsuccessfully challenged that order during the pendency of proceedings, prior to passing of the decree or otherwise.”

5. As the suit is decreed on 24.4.2018, the submissions of the learned Counsel are accepted and in view of the ratio laid down in **Emkay Exports, Mumbai & anr. (supra)**, the petition is allowed to be withdraw with liberty to challenge the impugned order in the Summons for Judgment No.52 of 2014 in Summary Suit No.61 of 2014.

6. Writ Petition is disposed of accordingly.

**(MRIDULA BHATKAR, J.)**