

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.935 OF 2016

Sushila Devi Ramakant Pathak and others ... Petitioners
Vs.
Birla Industries Groups of Charity Trust and
others ... Respondents

Mr. Rajesh Singh for Petitioners.
Mr. M. L. Palan i/b. Ms Jayshree P. Thakkar for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : MARCH 28, 2018

P.C. :

Heard Mr. Singh, learned Counsel for petitioners and Mr. Palan, learned Counsel for respondent No.2.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 07.01.2015 passed by the learned Judge, Court Room No.15 of the Court of Small Causes at Mumbai below exhibit-24 in R.A.D. Suit No.419 of 2013. By that order, the learned trial Judge rejected the notice taken out by the petitioners / plaintiffs for punishing defendant No.2 and respondent No.2 - Laxmilal Lalchand Jain for committing breach of order dated 08.05.2013.

3. A perusal of the impugned order shows that it dismisses the Motion taken out by the plaintiff under Order XXXIX, Rule 2-A of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for committing breach of order of injunction. In view of Order XLIII, Rule 1(r) of C.P.C., petitioners have an equally efficacious alternate remedy of filing

Miscellaneous Civil Appeal / Appeal from Order before the Appellate Bench of the Small Causes Court.

4. In view thereof, Mr. Singh seeks permission to withdraw this Petition with liberty to file Appeal before the Appellate Bench of the Small Causes Court. He assures that within 3 weeks from today, petitioners will file Appeal in the Small Causes Court. He submits that the time spent by the petitioners in prosecuting this Petition from 16.03.2015 till today may be excluded.

5. Mr. Palan has no objection.

6. In view thereof, on the motion made by Mr. Singh, Petition is allowed to be withdrawn with liberty as prayed for. If within 3 weeks from today, petitioners file Appeal challenging the impugned order, the time spent from 16.03.2015 till today shall be excluded. It is made clear that I have not examined the merits of the case. All contentions of the parties on merits are expressly kept open. Petition is disposed of.

(R. G. KETKAR, J.)

Minal Parab