

Ms Priti Shah for Petitioner.

P.C. :

Heard Ms Shah, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 05.04.2017 passed by the learned Judge, Court Room No.19 of the Court of Small Causes, Mumbai in Review Application No.7 of 2016. By that order, the learned trial Judge rejected the Review Application taken out by the petitioner seeking review of the judgment and order dated 24.10.2015 passed by the learned trial Judge in T.E.&R. Suit No.137/173 of 20015. The learned trial Judge partly decreed the Suit and rejected the prayer made by the plaintiffs for recovery of amount of Rs.1,83,11,244/- from the respondents-defendants.

3. After arguing the petition for quite some time, on instructions, Ms Shah seeks permission to withdraw this Petition with liberty to file substantive appeal. She further submits that plaintiffs desire to challenge clause 3 of the operative part of the order by which learned trial Judge ordered inquiry into mesne profits under Order XX Rule 12 of the Code of Civil Procedure, 1908 on the ground that mesne profits were already calculated.

4. In view thereof, on the motion made by Ms Shah, Petition is allowed to be withdrawn with liberty to file substantive appeal against trial Court's order dated 24.10.2015. It is made clear that I have not examined merits of the case.

5. Ms Shah states that plaintiffs will take out appropriate application for excluding the time spent by them in prosecuting the Review Application before the trial Court and Writ Petition in this Court.

6. If such application is made, the Appellate Court will consider the same on its own merits and in accordance with law. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab