

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12288 OF 2015

Surjerao Balu Dabade & Ors.

.. Petitioners

Vs.

Krishnat Kondiba Salunkhe & Ors.

.. Respondents

Mr.Pramod Kathne i/by Mr.Vishwajeet S. Kapse for the petitioners.
None for the respondents.

CORAM : R.D. DHANUKA, J.

DATE : 1st October 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 20th April 2015 passed by the learned trial Judge rejecting the application filed by the petitioners (original defendant Nos.1 and 2) under Order IX Rule 13 of the Code of Civil Procedure, 1908 on the ground that the said application is not maintainable in view of the fact that the learned trial Judge has passed a decree after appreciation of the evidence available on record and the same was not an ex parte judgment and decree.

2. With the assistance of the learned counsel for the petitioners, I have perused the judgment and decree passed by the learned trial Judge which indicates that the learned trial Judge has considered the evidence and documents on record and passed the said decree.

3. In my view, the remedy of the petitioners would be to challenge the said decree by filing an appeal. Learned trial Judge has rightly rejected the application filed by the petitioners under Order IX

Rule 13 of the Code of Civil Procedure, 1908. There is no merit in this writ petition. Writ petition is accordingly dismissed with aforesaid clarification. No order as to costs. It is however made clear that this Court has not expressed any views on merit of the decree passed by the learned trial Judge.

4. If any appeal is preferred by the petitioners, the same shall be considered by the Appellate Court on its own merit. If any application is filed for condonation of delay in filing the appeal, the Appellate Court may consider the exclusion of time under Section 14 of the Limitation Act, 1963 on the ground that the applicant is prosecuting the proceedings in this Court in good faith and with due diligence.

R.D. DHANUKA, J.

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