

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.9443 2016**

Bharat K. Pasta and others.] Petitioners
Vs.
Cooverji Merwanji Mehta Trust and others.] Respondents

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Mr. Surel S. Shah a/w Mr. Ish Jain i/b Kiran Jain & Co., for Petitioner

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CORAM : R.G. KETKAR, J.

DATE : 16th OCTOBER, 2018.

P.C:

Not on board. At the request of Mr. Shah, taken up in the production board.

2. Heard Mr. Shah, learned Counsel for the petitioner.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 7th March, 2016 passed below Exhibit 49 in T.E. Suit No.97/108 of 2007. By that order, the learned trial Judge rejected the application made by the plaintiffs for correcting the following sentence in the cross-examination;

“It is true that the defendant Nos. 1 to 5 have exercised their right to assign the interest in the suit premises in favour of 3rd person which was provided to them in indenture of lease executed in between plaintiff's and defendant Nos. 1 to 5 subject to written permission from the plaintiffs”

4. After arguing the Petition for quite some time, Mr. Shah, on instructions seeks permission to withdraw the Petition. He submitted that liberty may be reserved to the petitioners to challenge the impugned order in case adverse order is passed against the petitioners finally in the suit.

5. In view thereof, on the motion made by Mr. Shah, Petition is allowed to be withdrawn and as such is disposed of.

6. It is, however, expressly made clear that where a decree is appealed from by the petitioners, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]