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

WRIT PETITION NO.2391 OF 2017

Anil B. Gawas and ors ... Petitioners

V/s.

Rajesh Builders and others ... Respondents

Mr. C.S. Joshi, for the Petitioner

Mr. Mayur Khandeparkar a/w Mr. Bharatkumar Jain and
Ms. Karishma Mehta i/by Hariani & Co. for respondent
No.5.

Mr. Mayuresh S. Lagu, for the Respondent No.6.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26TH APRIL, 2018.

P.C. :

1] Not on board.

2] Upon mentioning, taken on today's board.

3] By this writ petition filed under Article 227 of the
Constitution of India, the petitioner is challenging the order dated
22.6.2016, passed by 9th Jt. Civil Judge Senior Division, Thane, below
Application at Exh.79 in R.C.S.No.181 of 2008.

4] The said application was filed by respondents, who are defendants before the trial Court for directing the petitioners herein to pay requisite Court fee as per Section 6(iv)(ha) of Bombay Court Fees Act.

5] The said order was passed, mainly on the count that the petitioners have carried out amendment in the plaint seeking the additional prayer for declaration that sale deed dated 14.5.2010 and two sale deeds dated 17.5.2010, be declared as null and void.

6] In view thereof the trial Court found that as the petitioners are claiming relief of cancellation of those sale deeds, the petitioners have to pay Court Fee as per Section 6(iv)(ha) of the Bombay Court Fee Act, in view of the judgment of this Court, in the case of *Prism Relity -vs- Govind Yashwant Khalade [2015 (4) Bom C.R.370]*.

7] Now learned counsel for the petitioners submits that the petitioners would like to modify the said prayer to the effect that those three sale deeds are not binding on the petitioners. For that purpose, he has relied upon the judgment of this Court in the case of *Dilip Bastiman Jain -vs- Baban Bhanudas Kamble and ors, [AIR 2002 Bombay 279]*.

8] In view of this, writ petition needs to be disposed of with liberty to the petitioners to modify the reliefs in respect of these three

sale deeds and thereafter the trial Court to decide the said application afresh as to the payment of proper Court fees stamp thereon.

9] The Writ Petition accordingly stands disposed of with liberty as sought.

[DR.SHALINI PHANSALKAR-JOSHI, J.]