

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

WRIT PETITION NO. 13128 OF 2016

Mr. Prakash Raghunath Sathe (decd)
Through Lrs. ...Petitioners
Vs.

M/s. Maharashtra Developers Through
Partner Shri. Rakesh Maheshwari ... Respondents

WITH

WRIT PETITION NO. 13129 OF 2016

Smt. Chhaya Sumant Walke & Anr. ...Petitioners
Vs.

M/s. Maharashtra Developers Through
Partner Shri. Rakesh Maheshwari ... Respondents

WITH

WRIT PETITION NO. 13130 OF 2016

Mr. Ganapati Sambha Gaonkar ...Petitioner
Vs.

M/s. Maharashtra Developers Through
Partner Shri. Rakesh Maheshwari ... Respondents

.....

Mr. Sandesh Patil I/b Mr. Chintan Y. Shah for the Petitioners in all
Petitions.

Mr. L. S. Deshmukh for th Respondent No.1 in all Petitions.

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CORAM : G.S. KULKARNI, J.

DATE : JANUARY 15, 2018.

P.C. :

1. Learned counsel for the respondent has raised a preliminary objection to the maintainability of this writ petition on the ground that under the provisions of Order 43 Rule 1-D, an appeal would be

maintainable against an order passed by the trial court rejecting the application made under Order 9 Rule 13 for setting aside an ex-parte decree. The objection seems to be correct and the remedy for the petitioner would be to file an appeal against the impugned order.

2. The petitioner is accordingly permitted to withdraw the petitions with liberty to file appeals. Dismissed as withdrawn, however with liberty as prayed for.

3. All contentions of the parties on merits are expressly kept open.

4. Needless to observe that the time spend by the petitioner in pursuing this petition shall be taken into consideration in considering the delay condonation application which may be filed on behalf of the petitioner in the proposed appeals.

5. The petitioner shall file the appeals within two weeks from today.

(G.S. KULKARNI, J.)