

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION [ST] NO.23476 OF 2018
WITH
CIVIL APPLICATION [ST] NO.23478 OF 2018

Mahesh R. Sharma] Applicant
Vs.
Terrance Joseph Gudincho & Ors.] Respondents

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Mr. Anand Mishra i/b A.M. Saraogi, for Applicant.
Mr. A. J. Almeida, for Respondents No.1 and 2.

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CORAM : R.G. KETKAR, J.

DATE : 22nd OCTOBER, 2018.

P.C.

Heard Mr. Mishra, learned Counsel for the applicant and Mr. Almeida, learned Counsel for respondents No.1 and 2.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant, hereinafter referred to as 'defendant' has challenged the judgment and decree dated 15th June, 2018 passed by the learned District Judge-2, Thane in Civil Appeal No.68 of 2016. By that order, the learned District Judge allowed the appeal preferred by respondents No.1 and 2 herein and set aside order dated 1st August, 2012 dismissing the application of the decree holder/appellant before the District Court for removal of obstruction and allowed that application.

3. It is common ground between the parties that decree of specific performance is in favour of respondents No.1 and 2. In view of provisions of

Order-XXI, Rule-97 r/w Rule-101 and Rule-103, remedy available to the applicant is to institute second appeal against the impugned order and not C.R.A under section 115. However, the applicant has instituted second appeal against the impugned order.

4. In view thereof, Mr. Mishra seeks permission to withdraw this C.R.A with liberty to institute second appeal. He further submits that time spent in prosecuting C.R.A from 18th September, 2018 till date may be excluded while considering issue of limitation.

5. In view thereof, on the motion made by Mr. Mishra, C.R.A is allowed to be withdrawn with liberty as prayed for. The time spent by the applicant in prosecuting the C.R.A from 18th September, 2018 till today i.e till 22nd October, 2018 shall be excluded while considering the question of limitation. Registry shall return certified copies filed by the applicant along with this C.R.A.

6. In view of disposal of C.R.A, Civil Application [ST] No.23478 of 2018 for stay does not survive and the same is dismissed.

[R.G. KETKAR, J.]