

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8052 OF 2016
(Satish Bhagwantrao Talekar Vs. Gulab Ramnath Thorat and
another)

Mr.A.K.Gawali, learned Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 30/01/2019

PER COURT :

1. On 14/01/2019, the following order was passed :-

"1. The petitioner is aggrieved by the order dated 30/03/2016 by which his Spl.Civil Suit No.10/2015 has been dismissed under Order VII Rule 11 of the CPC.

2. The petitioner would address the Court on the next date as regards whether a statutory remedy is available against the impugned order prior to approaching this Court under its supervisory jurisdiction.

3. Stand over to 30/01/2019 in the "Urgent Admissions Category".

2. Learned Advocate for the petitioner fairly cites the judgment delivered by this Court in the matter of Walchandnagar Industries Limited, Mumbai Vs. Indraprastha Developers, Pune and others

[2015(3) Mh.L.J. 786] wherein this Court has concluded that the effect of rejection of a plaint or dismissal of a suit under Order 7 of the CPC or even under Section 9-A (Maharashtra Amendment, now deleted on 27/06/2018) or such rejection even under Order 14 Rule 2 or under Order 7 Rule 11(d), would amount to a decree within the meaning of Section 2(2) of the CPC. As such, a statutory appeal under Section 96 r/w Order 41 Rule 1 would be available. It is clarified that this is besides the plaintiff getting a right to present a fresh plaint under Order 7 rule 13 of the CPC.

3. In view of the above, this petition is disposed of with liberty to the petitioner to avail of a remedy as is permissible in law. The time spent by the petitioner in this Court from 07/07/2016 till the passing of this order would be a ground for seeking condonation of delay.

(Ravindra V.Ghuge, J.)