

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

**APPEAL FROM ORDER (STAMP) NO.12440 OF 2019
WITH
CIVIL APPLICATION (STAMP) NO.12441 OF 2019
IN
APPEAL FROM ORDER (STAMP) NO.12440 OF 2019**

Kishor K. Mehta & Anr.

...Appellants

V/s.

Rekha H. Sheth & Ors.

...Respondents

....

Sr. Adv. Mr. Prasad Dani a/w Mr. Abhishek Prabhu a/w Mr. Yash Mehta I/b M/s. Thakore Jariwala & Associates, advocates for the appellants.

Mr. Prateek Seksaria, Counsel a/w Mr. Dharendra Sinha I/b Vidhi Partners, advocates for the respondent Nos. 1 to 5.

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CORAM : M.S.KARNIK, J.

DATE : 12th JUNE, 2019

P.C. :

1. Learned counsel for the respondents raised preliminary objection regarding the maintainability of the appeal. He invited my attention to the provision of section 41E of the Maharashtra Public Trust Act, 1950.

2. Faced with this objection, Sr. Counsel Mr. Dani appearing on behalf of the appellants submits that he has no objection for

filing a writ petition. He however expressed an apprehension that upon filing the writ petition, the respondents would then raise objection that there is an alternate remedy available by way of an appeal under section 41E of the Maharashtra Public Trust Act, 1950.

3. Learned counsel for the respondents in all fairness submitted that if a writ petition challenging the impugned order is filed, he would not raise an objection to the maintainability of the writ petition, on the ground that there exists a provision for filing an Appeal under section 41E of the Maharashtra Public Trust Act, 1950.

4. In this view of the matter, learned counsel for the appellants seeks withdrawal of the Appeal with a liberty to file a writ petition against the impugned order.

5. Liberty as prayed for is granted. The appeal is accordingly allowed to be withdrawn with liberty to file writ petition.

6. In view of withdrawal of the appeal, civil application is disposed of.

(M.S.KARNIK, J.)