

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

**WRIT PETITION NO.4672 OF 2018
IN
CIVIL APPLICATION NO.1177 OF 2018**

Priti Ajit Patil

...Applicant

Vs.

Manisha Sujit Patil

...Respondent

Mr. Ganesh Sovani, for the Applicant

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

P.C.:

1. Ld. Counsel for the applicant points out that substituted service by publication is already effected and affidavit of service alongwith copy of publication is placed on record.

2. As against the impugned order, petitioner has remedy by way of instituting the appeal. If the impugned order is considered to be under Order 7 Rule 11 of the CPC, then the same is construed as decree in terms of Section 2(2) of the CPC. If the impugned order is construed as dismissing the petitioners application for condonation of delay in instituting the appeal, even then the said order is an order in

appeal itself. Therefore, further appeal will lie against the same.

3. For the aforesaid, Ld. Counsel for the petitioner, seeks leave to withdraw this petition with liberty to institute an appeal.

4. Accordingly, leave is granted to withdraw the petition with liberty as aforesaid. This means that petitioner is permitted to withdraw this petition with liberty to institute an appeal.

5. It is made clear that as against the impugned order dated 31/1/2018, the petitioner had instituted this petition on 9/3/2018 and the same was pending till date.

6. The civil application does not survive and the same is also disposed of.

7. All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)