

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

**SECOND APPEAL NO.670 OF 2014
WITH
CIVIL APPLICATION NO.1571 OF 2014
IN
SECOND APPEAL NO.670 OF 2014**

Dinesh Jethabhai Shah and Anr. ... Appellants
Versus
Pune Municipal Corporation Through
Its Commissioner and Ors. ... Respondents

.....
Mr. Sanskar Marathe for Appellants.
Mr. R.M. Pethe for Respondent No.1.

.....

CORAM : M. S. KARNIK, J.

DATE : 25th JUNE, 2019.

P. C.:

1. Heard learned counsel for the appellants and learned counsel for the respondent.
2. Learned counsel for the respondent-Corporation raises a preliminary objection that the Appeal is not maintainable in view of the provisions of Section 411 of the Bombay Provincial Municipal Corporation Act as the impugned order has attained finality. He submits that only remedy to challenge the said order is by way of Writ Petition. Faced with this objection learned

counsel for the appellant seeks leave to withdraw the Appeal with a liberty to file Writ Petition challenging the impugned order. He however prays that the time spent in prosecuting the present Appeal be considered sympathetically while dealing with delay in filing the Writ Petition.

3. The Appeal is allowed to be withdrawn with liberty as prayed for. All contentions on merits are kept open. As the appellant was bonafide prosecuting the present Appeal, the benefit of the period spent in prosecuting a wrong remedy bonafide will obviously enure to the benefit of the appellant while considering the question of delay in filing the Writ Petition.

4. The Appeal is disposed of as withdrawn. Ad-interim order which is already operating to continue for a period of four weeks from today.

5. In view of the disposal of the Appeal, nothing survives for consideration in Civil Application. Civil Application is disposed of accordingly.

(M. S. KARNIK, J.)