

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8924/2017

Arun Kumar Mussaddy & Anr. ... Petitioners

V/s.

M/s. Ansal Housing and Construction
Ltd. & Ors. ... Respondents

Mr. Kezer Kharawala I/b. Lex Juris for the Petitioners
Mr. Chetan C. Agrawala for the Respondents

CORAM: K.K. TATED, J.

DATED : JANUARY 18, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 22.11.2013 passed by the Trial Court dismissing the Petitioner's Notice of Motion No.2775/2014 under order 9 Rule 13 of the Code of Civil Procedure, 1908.

2 The learned counsel for the Respondent submits that in view of the provisions of Order 43 Rule 1(c) of the Code of Civil Procedure, 1908 the Writ Petition is not maintainable. Hence, it is liable to be dismissed.

3 On the other hand, the learned counsel for the Petitioner submits that this court in the matter of *Jayshree Kirit Khatadia & Ors. Vs. Tilak Raj Khanna & Ors. 2015 SCC OnLine Bombay 161* had entertained the Writ Petition in such circumstances. Therefore, the Writ Petition is maintainable.

4 It is to be noted that in the present proceedings, the Petitioner had filed Notice of Motion under Order 9 Rule 13 of the Code of Civil Procedure, 1908 which was dismissed. Against that order an Appeal from Order is maintainable under order 43 Rule 1(c) of the Code of Civil Procedure, 1908.

5 Hence, the Writ Petition stands rejected. No order as to costs.

6 At this stage, the learned counsel for the Petitioner submits that instead of dismissing the Writ Petition, the Petitioner may be permitted to withdraw the same. To that effect he has given in writing. Same is taken on record and marked "X" for identification.

7 Earlier order of rejection of the Petitioner is recalled. The Writ Petition stands disposed of as withdrawn with liberty as prayed for.

8 No order as to costs.

(K. K. TATED, J.)