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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7831 OF 2015

Khandu Damu Jadhav & Ors. ..Petitioners.

V/s.

Ganpat Kisan Jadhav & Ors. ..Respondents.

Mr.N.C.Walimbe for the petitioners.

Mr.Nachiket V.Khaladkar for respondent Nos.1 to 6.

CORAM : M.S.SONAK, J.

DATE : APRIL 9, 2019

P.C.:-

Heard Mr.Walimbe, learned counsel for the petitioners and Mr.Khaladkar, learned counsel for the respondents.

2. Challenge in this petition is to the order dated March 19, 2015 by which learned trial Judge has allowed the defendant's application at Exhibit-12 seeking rejection of the plaint by resort to Order 7 Rule 11 of the Civil Procedure Code (the CPC).

3. Section 2(2) of the CPC defines the expression '*decree*' to *inter alia* include rejection of the plaint. Consequently, therefore, the impugned order is a '*deemed decree*' in terms of section 2(2) of the CPC. As against the impugned order, therefore, the petitioner has an

alternate and efficacious remedy of instituting an appeal. On this short point, this petition is not required to be entertained.

4. This petition is, therefore, dismissed as the petitioner has an alternate and efficacious remedy of an appeal.

5. The impugned order in the present case was made on March 19, 2015 and this petition was instituted on July 16, 2015 and was pending in this Court till date. Accordingly, if the petitioner applies for extension of time under section 14 or seeks condonation of delay under section 5 of the Limitation Act, this aspect may be taken into consideration.

6. However, all contentions of the parties are left open.

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

(M.S.SONAK, J.)