

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL FROM ORDER [STAMP] NO.21451 OF 2019**

Mahesh Karsan Makwana and Anr.	]	Appellants
vs.		
Dnyaneshwar Kondiba Shilamkar	]	Respondent

.....

Mr. Charanjeet Chanderpal, Advocate for the Appellants.

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CORAM : R.G. KETKAR, J.
DATE : 6th AUGUST, 2019.

P.C.

Not on board. At the request of Mr. Chanderpal, taken up in the production board.

2. Heard Mr. Chanderpal, learned Counsel for the appellants.

3. This Appeal takes exception to the order dated 24th June, 2019 passed by the learned Judge, City Civil Court, Mumbai in Summons for Judgment No.22 of 2019 in Summary Suit No.1343 of 2018. By that order, the learned trial Judge granted leave to defend the suit to the defendants on depositing amount of Rs.12,00,000/- in the Court within four weeks from the date of the order.

4. The respondent filed Summary Suit under Order-XLIII of the Code of Civil Procedure, 1908 (for short 'C.P.C') against the defendants. In that suit, the learned trial Judge by

the impunged order has granted leave to defend. The said order is not appealable under Order-XLIII of the C.P.C.

5. In view thereof, Mr. Chanderpal seeks leave to withdraw the appeal with liberty to file Writ Petition in this Court. He assures that within one week from today, the defendants will file Writ Petition in this Court. He submits that time spent by the defendants in prosecuting this appeal from 29th July, 2019 being date of filing of the appeal may be excluded while considering the issue of limitation.

6. In view thereof, on the motion made by Mr. Chanderpal, leave to withdraw the Appeal with liberty to file Writ Petition is granted and as such appeal from order is disposed of. If the Petition is filed within one week from today, time spent by the defendants in prosecuting this Appeal bona fide in this Court from 29th July, 2019 till today shall be excluded while considering the issue of limitation. It is made clear that I have not examined the merits of the case.

[R.G.KETKAR, J.]