

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

CIVIL WRIT PETITION NO.6226 OF 2019

Vasant K. Swami & Ors.

Since Deceased, Through LR's

a. Appasaheb V. Swami & Ors.

.. Petitioners

V/s.

M/s. Ajinkya Builders & Developers

Through Partner

Shri.Kiran Balwant Mangure & Ors.

.. Respondents

Mr.Datta Pawar i/b Mr. Rahul Walvekar, for the Petitioners.

CORAM : C.V. BHADANG, J.

DATE : 7th DECEMBER, 2020

P.C.

1. Heard learned counsel for the petitioners.

2. The petitioner is the original plaintiff in RCS No.1176 of 2015 pending on the file of the learned Civil Judge Senior Division, Kolhapur. The petitioner filed an application Exhibit-75 purportedly for an order of status-quo which application was rejected by the learned Trial Court on 13th July 2017. Feeling aggrieved the petitioner challenged the same in Miscellaneous Civil Appeal No.187 of 2017 before the learned District Judge at Kolhapur. The learned District Judge by the impugned order dated 20th October 2018 has dismissed the appeal as according to the learned District Judge the

impugned order does not “Come within the purview of Section 104 or Order XLIII of C.P.C.” In short the learned District Judge has dismissed the appeal as not being competent. It is this order which is subject matter of challenge in this petition.

3. The learned counsel for the petitioner submitted that the learned District Judge was an error in refusing to entertain the appeal on the ground that the impugned order passed by the learned Trial Court does not fall within the purview of Section 104 or Order XLIII of C.P.C. Insofar as the delay in filing the present petition is concerned it is submitted that in the interregnum the respondents were not proceeding with any construction. The learned counsel has referred to the photographs, now produced claiming that the respondents are now making some development on the disputed land.

4. After the learned counsel for the petitioner was heard for some time, the learned counsel on instructions, sought leave to withdraw the petition with permission to file a properly constituted application under Order XLIII Rule 1 and 2 read with Section 151 of C.P.C. He submits that the Trial Court may be directed to decide the said application expeditiously.

5. I have considered the circumstances and the submissions made. Inasmuch as the petitioner is seeking leave to withdraw the petition and no adverse order is being passed against the respondents, it is not necessary to issue notice to the respondents.

6. In the result, the petition is disposed of as withdrawn with liberty to the petitioner to file a properly constituted application under Order XLIII Rule 1 and 2 read with Section 151 of the C.P.C. before the Trial Court. If such an application is filed, the learned Trial Court shall decide the same after hearing the parties on its own merits and in accordance with law, as expeditiously as possible and without being influenced by the earlier order dated 13th July 2017.

In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.