

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 451 OF 2017****WITH****CIVIL APPLICATION NO. 578 OF 2017****IN****APPEAL FROM ORDER NO. 451 OF 2017**

Shri Mahesh Ashok Mathwad & Ors.

.....Appellants.

Vs.

Vijashree Co-Operative Housing
Society Limited & Ors.

.....Respondents.

Mr. S.C. Wakankar for the Appellants.

Mr. S.A. Rajeshirke for Respondent No.1.

CORAM : A. S. GADKARI, J.**DATE : 11th FEBRUARY, 2020.****P.C.:-**

At the outset, learned counsel for the Respondent No.1 submitted that, the Appellants have already filed an Application under Order 39 Rule 4 of the Code of Civil Procedure, 1908 (for short, “C.P.C.”) for modification of the impugned Order dated 14th July, 2016 passed below Exhibit 5, in Special Civil Suit No. 479 of 2015 and therefore, as of today, the present Appeal impugning the said Order, does not survive.

2 In view thereof, learned counsel for the Appellants seeks leave to withdraw the present Appeal with liberty to pursue the said Application

filed under Order 39 Rule 4 of the C.P.C..

He further seeks liberty to impugn the present Order dated 14th July, 2016 passed below Exhibit 5 in Special Civil Suit No. 479 of 2015, if his Application filed under Order 39 Rule 4 of the C.P.C. is not positively considered by the Trial Court.

Leave and liberty granted.

Appeal is accordingly disposed off as withdrawn, with aforesaid liberty.

3 In view of disposal of the Appeal itself, Civil Application No. 578 of 2017 does not survive and is also disposed off.

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(A.S. GADKARI, J.)