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

WRIT PETITION NO.1278 OF 2019

Ashok Narayan Yemul ... Petitioner
Versus
Narendra Dasharath Gaikwad and Anr. ...Respondents

Mr. V.V. Salunke, for the Petitioner.

Mr. Jaydeep Deo, for the Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the Petitioner.
2. By this Petition, the Petitioner has impugned the order dated 7th February, 2017, passed by the learned District Judge – 15, Pune, below Exhibit – 12, in Civil Appeal No.135 of 2013, by which, the learned Judge was pleased to reject the petitioner's application for amendment in the Appeal Memo filed under Order VI Rule 17 of the Civil Procedure Code.
3. Learned Counsel for the Respondent No.1 (original plaintiff) i.e. the contesting respondent submits that the application (Exhibit – 12)

filed by the petitioner under Order VI Rule 17 itself was not maintainable. He submits that the petitioner ought to have filed an application, if any, under Order XL Rule 2 and 3 of the Civil Procedure Code.

4. Considering the aforesaid, learned counsel for the petitioner seeks leave to withdraw this petition with liberty to file an appropriate application under Order XL Rule 2 and 3 of Civil Procedure Code, before the Appellate Court in Civil Appeal No.135 of 2013.

5. Considering that the application filed by the petitioner under Order VI Rule 17 of Civil Procedure Code, was not maintainable, it would be appropriate to grant liberty to the petitioner to file an appropriate application before the Appellate Court under Order XL Rule 2 and 3 Civil Procedure Code for seeking an amendment in the Appeal Memo.

6. Accordingly, no interference is warranted in the impugned order dated 7th February, 2017, passed by the learned District Judge – 15, Pune, below Exhibit – 12, in Civil Appeal No.135 of 2013. The petitioner is however, at liberty to file an appropriate application under Order XL Rule 2 and 3 of Civil Procedure Code for seeking amendment in the Appeal Memo before the Appellate Court.

7. At this stage, learned counsel for the petitioner states that the petitioner will file an appropriate application within three weeks from today.

8. If such an application is filed, the learned Judge to decide the same, after hearing the parties, on its own merits, expeditiously, uninfluenced by the impugned order dated 7th February, 2017. All contentions of all the parties are kept open.

9. Petition is accordingly disposed of as withdrawn with liberty as prayed.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.