

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 31849 OF 2019

WITH

INTERIM APPLICATION NO. 2 OF 2019

IN

APPEAL FROM ORDER (STAMP) NO. 31849 OF 2019

Kamlesh Nair

.....Appellant.

Vs.

Shushila Ramlal Nirmal & Ors.

.....Respondents.

Mr. D.V. Saroj for the Appellant.

Mr. Jignesh Gor i/by Geeta Anand for the Respondent No.1.

CORAM : A. S. GADKARI, J.

DATE : 21st FEBRUARY, 2020.

P.C.:-

At the outset, learned counsel for the Respondent No.1 raised a preliminary objection and submitted that, the present Appeal filed under Order 43 Rule 1 of the Code of Civil Procedure, 1908 (for short, “CPC”), against the impugned Order dated 17th October, 2019 passed in Chamber Summons No. 801 of 2019 in L.C. Suit No. 1671 of 2019, is not maintainable.

2 Perusal of the Order 43 Rule 1 of the CPC would clearly indicate that, there is a substance in the said contention made by the

learned counsel for the Respondent No.1.

3 Facing with the said difficulty, learned counsel for the Appellant seeks leave to withdraw the present Appeal with liberty to file a substantive Writ under Article 227 of the Constitution of India, impugning the said Order dated 17th October, 2019.

Leave and liberty granted.

Appeal from Order is accordingly disposed off, as withdrawn with aforesaid liberty.

4 In view of dismissal of Appeal itself, Interim Application No.2 of 2019 does not survive and is also disposed off.

Sanjiv S.
Mashalkar
Digitally signed
by Sanjiv S.
Mashalkar
Date:
2020.02.27
15:42:57
+0530

(A.S. GADKARI, J.)