

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

962 WRIT PETITION NO. 584 OF 2021

RENUKA D/O NITIN PANCHAL THROUGH HER GUARDIAN
ANITA W/O NITIN PANCHAL

VERSUS

SHOBHA W/O BHAGWANRAO PANCHAL

.....

Advocate for Petitioner : Mr. Gandhi Amol S.

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CORAM : V. K. JADHAV, J.

DATED : 5TH FEBRUARY, 2021

PER COURT :-

1. Heard.
2. The petitioner though filed this Writ Petition challenging the compromise decree passed by the trial court in a pending suit, in terms of the ratio laid down by the Hon'ble Supreme Court in the case of *Triloki Nath Singh v. Anirudh Singh (d) Thr. Lrs and Others*, reported in (2020) 6 SCC 629, learned counsel for the petitioner, on instructions, seeks leave to withdraw this Writ Petition with liberty to the petitioner to prefer an appeal against the said compromise decree passed in the suit.

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3. In the case of ***Triloki Nath Singh*** (supra), in para 18, the Supreme Court has made the following observations.

“18. It can be further noticed that earlier under Order 43 Rule 1(m), an appeal which recorded the compromise and decide as to whether there was a valid compromise or not, was maintainable against an order under Rule 3 of Order 23 recording or refusing to record an agreement, compromise or satisfaction. But by the amending Act, aforesaid clause has been deleted, the result whereof is that now no appeal is maintainable against an order recording or refusing to record an agreement or compromise under Rule 3 of Order 23. Being conscious of this fact that the right of appeal against the order recording a compromise or refusing to record a compromise was being taken away, a new Rule 1A was added to Order 43 which is as follows:

“1A. Right to challenge nonappealable orders in appeal against decree.— (1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that

such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.”

4. Thus, in view of the ratio lay down by the Supreme Court, the petitioner is at liberty to file an appeal before the District Court.

5. The Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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