

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 SECOND APPEAL NO.296 OF 2021
WITH CA/6335/2021 IN SA/296/2021

MOHAMMAD SAHIR MOHAMMAD SHARIF HAMDULE DIED THR LRS
JAVED SAHIR HAMDULE AND ORS

VERSUS

MUSTAFA IBRAHIMSAB GHANTE AND ORS

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Mrs. Anjali Dube, Advocate for appellants

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CORAM : SMT. VIBHA KANKANWADI, J.

ORDER : 06th SEPTEMBER, 2021.

PER COURT :

1 Heard learned Advocate for the appellants. In view of the order passed by this Court on 04.08.2021 when it was pointed out the position of the Full Bench of this Court in **Dattatraya Krishna Jangam vs. Jairam Ganesh Gore, AIR 1965 BOMBAY 177**, the learned Advocate for the appellants accepts that the Second Appeal will not be maintainable and the appellants would be required to file writ petition, in view of the fact that the appellant had canvassed the right as tenant in respect of the suit property. She requests that she be permitted to withdraw the Second Appeal with liberty file writ

petition.

2 Taking into consideration the legal defect and the elaboration of the jurisdiction under Section 28 of the then Bombay Rent Control Act in the above said decision by the Full Bench of this Court and now as regards the jurisdiction is concerned, Section 33 of the Maharashtra Rent Control Act would be applicable and, therefore, the Second Appeal, as contemplated under Section 100 of the Code of Civil Procedure, 1908, is not maintainable here. Therefore, the appellants are allowed to withdraw the Second Appeal to prosecute any other available legal remedy. Second Appeal stands disposed of accordingly. Pending Civil Application stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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