

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 144 OF 2021****WITH****I.A. NO. 1566 OF 2021****IN****APPEAL FROM ORDER NO. 144 OF 2021**

Shivsamarth Seva Sangh & Ors.

.....Appellants/
Applicants.

Vs.

M/s. Tayabji Estate Private Ltd. & Ors.

.....Respondents.

Dr. U.P. Warunjikar i/by Mr. R.P. Lote for the Appellants/Applicants.
Mr. Narayan Sahu a/w M.S. Federal & Mr. Shrinivasan Mudaliar i/by M/s.
Federal & Co. for the Respondent Nos.1 and 2.

CORAM : A. S. GADKARI, J.

DATE : 23rd JULY, 2021.

(Through Video Conferencing)

P.C.:-

At the outset the learned counsel appearing for the Respondent Nos.1 and 2 raised a preliminary objection and submitted that, the present Appeal filed under Order 43 Rule 1 of the Code of Civil Procedure (for short, *the CPC*), impugning the Order dated 15th March, 2021 passed in Notice of Motion No.1445 of 2019 in Suit No.6796 of 2004 is not maintainable, as the said Notice of Motion was not filed under any of the provisions as contemplated under Rule 1 of Order 43 of the CPC.

2 Facing with the said difficulty, learned counsel appearing for

the Appellants, on instructions, seeks leave to withdraw the present Appeal from Order with liberty to file a substantive Petition under Article 227 of the Constitution of India impugning the said Order dated 15th March, 2021 passed in Notice of Motion No.1445 of 2019 in Suit No.6796 of 2004.

Leave and liberty granted.

Appeal from Order is disposed off as withdrawn, with aforesaid liberty.

3 It is needless to mention that, the Appellants will get benefit of the period pursuing the present Appeal from Order, as contemplated under Section 14 of the Limitation Act while impugning the said Order dated 15th March, 2021 in Notice of Motion No.1445 of 2019 in Suit No.6796 of 2004 while adopting appropriate proceedings.

4 In view of disposal of the Appeal from Order itself, Interim Application No.1566 of 2021 does not survive and is also disposed off.

(A.S. GADKARI, J.)