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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.159 OF 2019

ABDUL SAMAD ABDUL RAHIM
VERSUS
MOHD YOUSUF KHAIRUDDIN REAL NAME MOHD
YOUSUF ABDUL GAFFAR

...
Mr S. S. Kazi, Advocate for petitioner;
Mr H. I. Pathan, Advocate for respondent

CORAM : SMT. BHARATI DANGRE, J.

DATE : 7th January, 2022

PER COURT:

1. On the preliminary objections being raised by the learned Counsel for the respondent, the learned Counsel for the petitioner state that being aggrieved by the order dated 03/12/2018, an appeal shall lie to this Court, instead he has filed the writ petition.

Since the learned Counsel has conceded to the fact that the writ petition is not maintainable and under Section 384 of the Indian Succession Act, 1925, an appeal has to be preferred, he seeks leave to withdraw the present writ petition with liberty to file an appeal.

(2)

On an appeal being preferred, the petitioner is entitled to take benefit of availing the wrong remedy by filing the writ petition and on that ground, the Court may consider condonation of delay, since the delay is on account of prosecuting a wrong remedy.

2. Resultantly, the writ petition is permitted to be withdrawn, with liberty as prayed for.

3. On 07/01/2019, on the first listing of the writ petition, this Court had continued the interim relief in operation as granted by the District Court and since then, it is in favour of the petitioner. Let the interim relief continue for a period of eight weeks from toady.

(SMT. BHARATI DANGRE, J.)

sjk