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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.502 OF 2022

Shakir Hussain Qureshi & Anr ... Petitioners
V/s.
Ratnaprabha Vitthal Bhosle & Ors ... Respondents

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Mr. Rishi Malhotra i/by Mr. Jahangir Khan, for the
petitioners.

Mr. Mahesh Vishwakarma, for respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 21, 2023

P.C.:

1. The order challenged in the petition is passed on an application under Order 21, Rule 97 of the Code of Civil Procedure, 1908.
2. Rule 101 of Order 21 confers status of a decree on an adjudication made by the Executing Court in exercise of power under Order 21, Rule 97. Therefore, remedy of aggrieved person is to challenge such order by way of filing regular appeal before the Court having jurisdiction to entertain the appeal.
3. This writ petition being under Article 227 of the Constitution of India, where challenge is to the decree passed by Executing Court while executing decree passed by the Civil Court, such writ petition would not be maintainable by the reason of availability of

statutory remedy provided under Section 96 of the Code of Civil Procedure, 1908. Faced with this difficulty, learned Advocate for the petitioner, seeks permission to withdraw the writ petition with liberty to file statutory appeal before the appropriate Court.

4. In view of notice issued by this Court and petition having been entertained by subsequent benches, the period spent in prosecuting the present writ petition shall be construed liberally by the Appellate Court while deciding application for condonation of delay in proposed appeal to be filed by the petitioner.

5. The petitioner is, therefore, permitted to be withdrawn with liberty to file statutory appeal before the appropriate Court.

6. The amount deposited by the petitioner in furtherance of order dated 29 November 2022, the petitioner is permitted to withdraw amount of Rs.47,79,440/-.

(AMIT BORKAR, J.)