

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 12540 OF 2023****Vilas Prabhakar Jagtap & Anr.****..... Petitioners****VERSUS****Rasilaben Mahipatrai Shah Family
Trust & Ors.****..... Respondents**

Mr.Balasaheb Deshmukh for the Petitioners.

None for the Respondents.

CORAM: RAJESH S. PATIL, J.**DATE : 20th OCTOBER, 2023****P.C:-**

This writ petition is filed under Article 227 of the Constitution of India, challenges order dated 4th January, 2023 passed on application below Ex.12, in R.A.E. & R. Suit No. 359 of 2021, by a learned Single Judge of the Court of Small Causes at Mumbai.

2. By the impugned order dated 4th January, 2023, an application preferred by the petitioners herein, for extension of time to file written statement, was rejected.

3. It is the case of the petitioners that the petitioners/defendants were served with the summons only on 13th January, 2022. It is further

their case that thereafter they engaged the services of the lawyer and on 19th April, 2022 preferred application Ex.12 for delay condonation and seeking time to file written statement.

4. The advocate for the petitioners on instruction states that even though this writ petition challenges impugned order, but the remedy under Order VIII Rule 1 and Section 151 of the Code of Civil Procedure, 1908 is available. Therefore, he prays that on instructions, writ petition be allowed to be withdrawn with liberty to file appropriate proceedings.

5. If an application under Order VIII Rule 1 and Section 151 of the Code of Civil Procedure, 1908 is preferred by the petitioners/defendants within 2 weeks, the learned Judge, who is hearing the R.A.E. & R.Suit No. 359 of 2021, should decide the same on its own merits as per the provisions of law.

6. Writ petition is disposed of as withdrawn with liberty as prayed.

[RAJESH S. PATIL, J.]