

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12376 OF 2022

Tukaram Namdev Jakhale and ors. ...Petitioners

Versus

Shamlal Aaratmal Bachrani ...Respondent

Mr. Sandeep Koregave, a/w Pallavi Karanjikar, for the
Petitioners.

Mr. Chetan Patil, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 24th FEBRUARY, 2025

PC:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 2nd January, 2021 passed by the learned Civil Judge striking out the defence of the defendants – petitioners, purportedly under Order XXXIX Rule 11 of the Code of Civil Procedure, 1908.
3. Mr. Patil, the learned Counsel for the respondent, submits that in view of the provisions contained in Order 43, as amended by Bombay High Court, the order passed under the provisions of Order XXXIX Rule 11 is appealable and, thus, the petitioner has an efficacious remedy.

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2025.03.01
14:48:53 +0530

4. Rule 11 has been inserted to Order XXXIX by the Bombay High Court Amendment, 1983.
5. Consequently, clause (r) of Rule 1 of Order 43 has also been amended by the Bombay High Court Amendment, 1983.
6. In view of the above as there is an efficacious remedy of appeal against order impugned in this petition, the petition stands disposed with liberty to the petitioner to avail the remedy as available in law.
7. In the event the question of limitation arises, the time for which the instant petition has been prosecuted may be accounted for under Section 14 of the Limitation Act.
8. Petition disposed.

[N. J. JAMADAR, J.]