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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2746 OF 2015

Khan Asif Mohd Ismail Khan

PETITIONER

VERSUS

Altaf Mohd Ismail Khan & Another

RESPONDENTS

.....
Mr. Satyajeet S. Dixit, Advocate for the petitioner
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 8th APRIL, 2015

ORDER :

1. Heard learned advocate for the petitioner.
2. The petitioner is before this court against an order dated 7th January, 2015 whereunder civil miscellaneous application bearing No. 30 of 2014, for condonation of delay in filing appeal against judgment and decree of Civil Judge Senior Division, Shrirampur in Regular Civil Suit No. 79 of 2012 (Old Special civil Suit No. 41 of 2011) has been allowed. There had been delay of twelve days and application had been filed by the applicants / appellants contending that the advocate had communicated about the decree of possession passed on 23rd July, 2014 with an advice that appeal will have to be preferred before High Court

and that for filing appeal before High Court, period of limitation was sixty days and as such, appeal could be filed by 10th October, 2014. In addition to the same, the appellants had received caveat notice from advocate practising at Aurangabad Bench of Bombay High Court and as such, a belief had been generated that appeal would lie before the High Court and could be filed till 10th October, 2014. The delay caused was not deliberate or intentional.

3. Learned advocate for the petitioner vehemently submits that the application is vague, as the same does not refer to the name of the advocate and further relying on the judgment of Delhi High Court reported in "2004 (4) Civil LJ 377 "*Chanceteam Investments Ltd., V. R. D. Ramanath Company and Others*", submits that where perfunctory and general statement is made about lapse by advocate, the same may not be a case for condonation of delay and since there has been no complaint against the conduct of the advocate, the delay ought not have been condoned by the appellate court. However, said judgment appears to have been rendered on a different set of facts. It would not hold the present situation.

4. Here, in the present case, the application makes reference

to a lawyer who was appearing for the appellants / applicants in the trial court. It is further being specifically referred to that as the lawyer was under impression that appeal may lie to the High Court, which was further strengthened by the fact that caveat notice had been received from a lawyer practising at Aurangabad Bench of Bombay High Court, the belief entertained by the respondents cannot be said to be improper or erroneous. Further, the decree is of possession and by causing deliberate or intentional delay, the respondents are not at all going to get any benefit out of the same and while it comes to delay condonation, a liberal approach has to be maintained, having regard to that, the discretion, as has been exercised in the present matter, by the appellate court while considering application for delay condonation, appears to be judiciously exercised, I do not consider this to be a fit case for interference under the discretionary powers of this Court.

5. Writ petition, as such, stands rejected with no order as to costs.

[SUNIL P. DESHMUKH, J.]