

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

**CIVIL APPLICATION NO. 7354 OF 2015
IN
SECOND APPEAL STAMP NO. 7988 OF 2015**

Digambar Haribhau Kote

...APPLICANT

versus

Suresh Dattatrya Mundlik and others

...RESPONDENTS

.....
Mr. P.B. Shirsat, Advocate for applicant

Mr. Milind Patil, Advocate for respondent No. 3
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 4th DECEMBER, 2015

Order :-

1. Heard learned counsel for parties.
2. Mr. Shirsat, learned counsel for applicant submits that there is delay of 88 days in filing second appeal and it be considered marginal in the facts and circumstances of the case, for, he points out that to prosecute the second appeal in high court quite sometime was required to be spent for making arrangements of funds.
3. On the other hand, Mr. Patil submits that the applicant is a businessman and his economic position is sound. Reasons given in the application would not be proper. He further purports to contend that suit is for specific performance of contract, in the circumstances it is presupposed that he is ready and willing to perform his part of contract, in such as case, arrangement of funds is a vacuous plea.

4. Taking into account that applicant has further referred to that it was upon meeting with advocate the decision had been taken to file second appeal, although it is being referred to that it would have not been difficult for the applicant to arrange for necessary funds, it is considered in jurisprudence that contest on merits would always be preferred.

5. Having regard to that delay is of 88 days, I deem it appropriate that in the interest of justice and taking into account legal position prevailing in the cases of condonation of delay, where liberal approach has been vaunted, application be allowed.

6. Accordingly, civil application is allowed in terms of prayer clause "B" and stands disposed of.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK