

SECOND APPEAL NO. 494 OF 2015

Mr. Uday P. Warunjikar, Advocate for appellant

CORAM : R.K.Deshpande, J.
DATED : 6th JULY, 2015.

P.C.

This appeal by the original plaintiff challenges the judgment and order dated 12.08.2014 passed by the lower appellate Court, dismissing Civil Miss. Application No. 9 of 2014 (Exh.13) seeking condonation of delay of 4 years and 24 days caused in filing an appeal challenging the compromise decree passed by the trial Court on 16.12.2009 below Exh.42 in Special Civil Suit No. 89 of 2007. The lower appellate Court has held that the appellant has failed to make out the sufficient cause to condone the delay of 4 years and 24 days.

In view of the provision of sub-section (3) of Section 96 of the Civil Procedure Code, no appeal lies from the decree passed by the Court with the consent of the parties. The appeal before the lower

appellate Court was itself not maintainable and hence, the question of considering the application for condonation of delay by the lower appellate Court did not arise.

In view of the fact that the first appeal itself was not maintainable before the lower appellate Court, the second appeal challenging the order passed therein is also not maintainable. The same is, therefore, dismissed, leaving it open for the appellant to adopt all such appropriate remedies as are available in law and the Court dealing it shall not get influenced by any of the observations made by the lower appellate Court.

(R.K.DESHPANDE, J.)