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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3830 OF 2016

Nivrutti Shankar Patil

PETITIONER

VERSUS

Deelipsing Chatrabhuj Ved (Died) LRs & others RESPONDENTS

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Mr. Siddhartha B. Yawalkar, Advocate for the petitioner

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 4th APRIL, 2016

ORDER :

1. Heard learned advocate for the petitioner.
2. Purportedly aggrieved by order dated 17th November, 2015 on Exhibit-1 in Civil Miscellaneous Application No.97 of 2013, which is an application for condonation of delay in restoration of regular civil appeal No.379 of 1995, which was dismissed in default, the petitioner is before this court.
3. After hearing learned advocate for the petitioner it appears that the appellate court has considered that respondents had no knowledge about the dismissal of the appeal for quite some time and that quite a bit of time had also been consumed in securing certified copies of the orders, required for making movement against order of dismissal of the suit in default.

4. The thrust of the submissions of the learned advocate is that when there is specific provision in the form of Order XLI, Rule 19 of the Civil Procedure Code, which refers to that the matter can be readmitted, the application for restoration along with delay condonation application could not have been resorted to.

5. However, learned advocate is not able to wriggle out the situation that appeal is considered to be continuation of the suit and as such, relevant powers exercisable by the trial court in the suit would also be exercisable at the appellate stage by the appellate court. Moreover, having regard to the considerations which have weighed with the appellate court and having also regard to the citation referred to and relied upon on behalf of the respondent and considered by the appellate court, I do not consider that in the present case the discretion exercised by the appellate court while passing the impugned order deserves to be meddled with.

6. Writ petition, as such, is not being entertained and is rejected.

[SUNIL P. DESHMUKH, J.]