

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 466 OF 2016**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Prabhakar M. Jadhav, Advocate for Petitioners.

Mr. Vishwanath S. Talkute, Advocate for Respondent.

CORAM: R.G.KETKAR, J.

DATE : 19/01/2016

PC:

1. Heard Mr. Prabhakar Jadhav, learned counsel for the petitioners and Mr. Vishwanath Talkute, learned counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged the Judgment and order dated 23.11.2015 passed by the learned Addl. District Judge, Malshiras in Civil Misc. Application No.11 of 2015. By that order, the learned District Judge rejected the application made by the plaintiffs for

condoning delay of 2 years and 4 months in filing the Appeal.

3. The plaintiffs instituted suit for specific performance of contract dated 17.1.1986. The respondent, hereinafter referred to as 'defendant', resisted the suit and set up counter-claim and sought delivery of possession of the suit property. It appears that the suit was dismissed in default and counter-claim of the defendant was decreed on 20.9.2012. Appeal was preferred by the plaintiffs and since there was delay of 2 years and 4 months in filing the Appeal, the application for condonation was made which is rejected by the impugned order.

4. Mr.Talkute has raised a preliminary objection on the ground that the plaintiffs have to institute Second Appeal as the order rejecting the application for condonation of delay amounts to merger and passing of a decree by the appellate court. He relied upon the decision in the case of Sheodan Singh Vs. Smt Daryao

Kunwar, AIR 1966 SC 1332.

5. Realizing this position, Mr Jadhav seeks permission to withdraw this petition with liberty to file Second Appeal. He submitted that the executing Court has fixed 25.1.2016 as the next date. He submitted that the plaintiffs may be directed not to proceed with the execution proceedings for a period of two weeks from today so as to enable the plaintiffs to file Second Appeal and obtain appropriate interim orders therein. He assures that before moving the Court for getting interim order, he will give advance notice to the defendant. He further assures that he will not seek further extension of time.

6. Mr. Talkute submits that the defendant will not proceed with execution proceedings for a period of three weeks from today. If for any reason the plaintiffs do not obtain suitable order from this Court, statement shall stand discontinued after expiry of three weeks

from today.

7. In view thereof, on the motion made by Mr Jadhav, petition is allowed to be withdrawn with liberty as prayed for. It is made clear that I have not examined merits of the case. Notwithstanding disposal of the petition, for a period of three weeks from today, the defendant will not proceed with the execution proceedings and after expiry of three weeks, statement made by the defendant shall come to an end.

(R.G.KETKAR, J.)