

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.255 OF 2016**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Mr. Prasad Apte a/w. Mr. G.R. Tripathi,
Advocate for Applicant.

CORAM : R.G.KETKAR, J.

DATE : 27/04/2016

P.C.:

1. Not on board. At the request of Mr. Apte, taken up in the production board.
2. Heard Mr. Prasad Apte, learned Counsel for the applicant.
3. By this application under Section 115 of Code of Civil Procedure, 1908, the applicant has challenged the judgment and order dated 14.1.2016 passed by learned District Judge-2, Vasai below Exhibit-1 in Civil Misc. Appeal No.2/2014. By that order, learned District Judge rejected the application filed by the applicant for condonation of delay in filing the substantive appeal against the judgment and decree dated 26.3.2009 passed in Special Civil Suit No.107/2007.
4. Mr. Apte fairly pointed out that in the case of ***Sheodan Singh vs. Daryao Kunwar***,

AIR 1966 SC 1332, Apex Court has held thus :

“We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision to the trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.”

5. Mr. Apte, therefore, seeks permission to withdraw this application with liberty to file Second Appeal. On the motion made by Mr.Apte, Civil Revision Application is allowed to be withdrawn with liberty as prayed for. It is made clear that I have not examined the merits of the case.

(R.G.KETKAR, J.)