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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

***SECOND APPEAL NO. 549 OF 2015
with
CIVIL APPLICATION NO. 1217 OF 2016***

Mr. Nandkumar Vitthal Mokashi. ...Appellant/Applicant.

V/s.

Mr. Nagnath Arjun Sarwade. ... Respondent.

Mr. A.B. Tajane for the Appellant/Applicant.
Mr. Surel Shah for Respondent 1.

CORAM : N.M. Jamdar, J.

11 August, 2016.

Oral Order :-

By order passed today in Civil Application No. 1235 of 2016 the earlier order was recalled. By consent, the Appeal is taken up for disposal forthwith.

2. By order dated 31 August 2015 the Appeal is directed to be taken for final disposal. Accordingly, taken up for final disposal.

3. The Appellant challenges the Judgment and Order passed by the District Judge, Solapur dated 23 April 2015 rejecting the Application for condonation of delay of 5 years 11 months and 24 days in filing the First Appeal against the Judgment and Decree passed in Special Civil Suit No. 535 of 1997 dated 23 February 2009.

4. The Suit was filed by the Respondent for specific performance of an agreement dated 13 December 1996. The Suit was decreed by the learned Civil Judge on 23 February 2009 and the Appellant was directed to execute the sale deed upon receipt of the balance consideration. An Appeal was filed by the Appellant in the District Court, Solapur alongwith the application for condonation of delay of 5 years 11 months and 24 days in filing the Appeal. By the impugned order this Application has been dismissed.

5. Heard learned Counsel for the parties.

6. The learned Counsel for the Appellant submitted that the cause made out in the Application was sufficient and the learned District Judge ought not to have dismissed the substantive Appeal which has caused grave prejudice to the Appellant. The learned Counsel for the Respondent supported the impugned order and submitted that the Application was correctly dismissed. The learned Counsel for the Respondent submitted that this cause is not

sufficient at all.

7. I have gone through the Application. In the Application the cause made out is that the issue whether the Plaintiff is an agriculturist or not was referred to Tenancy Authorities under the Bombay Tenancy and Agricultural Land Act, 1948. It was stated that after the notice was received in Darkhast Proceedings that the Appellant made enquiries and thereafter, filed the Appeal.

8. While considering the Application for condonation of delay, justice oriented approach must be kept in mind. It is not that Application for condonation of delay either has to be allowed in toto or rejected. Equities can be balanced by imposing conditions. Decree of specific performance has been granted against the Applicant and if the delay is not condoned the decree will be executed. Considering the cause made out, an opportunity needs to be given to the Appellant to put-forth his case on merits in the substantive Appeal provided under the Code of Civil Procedure. At the same time, the prejudice that may arise to the Respondent also cannot be lost sight of.

9. The equities can be balanced by imposing appropriate costs on the Appellant. To my mind, costs of Rs.10,000/- would be appropriate in the facts and circumstances of this case. In view of

this position, the Second Appeal is allowed. The question of law framed is answered in favour of the Appellant. The judgment and order passed by the learned District Judge, Solapur dated 23 April 2015 is quashed and set aside. The Civil Misc. Application No. 55 of 2015 is allowed. Civil Appeal filed by the Appellant is restored to file, however, subject to the Appellant putting the costs of Rs. 10,000/- to the Respondent within period of two weeks from today.

10. All contentions in the Appeal are kept open. The parties will appear before the learned District Judge, Solapur on 6 September 2016. The learned District Judge, considering that the Suit is of the year 1997, will give priority to the disposal of the Appeal. No order as to costs.

11. Civil Application is disposed of accordingly.

(N.M. Jamdar, J.)