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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.2048 OF 2017
IN
SECOND APPEAL (ST.) NO.2162 OF 2017**

Darshansingh s/o Indersingh Sodhi,
Age: 70 years, Occu: Business,
R/o. Osmanpura, Aurangabad

..APPLICANT

VERSUS

The Municipal Corporation,
Through its Commissioner,
Aurangabad

..RESPONDENT

Mr J. M. Murkute, Advocate for applicant;
Mr A. P. Bhandari, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 5th July, 2017

ORAL ORDER

Heard Mr Murkute, learned Counsel appearing on behalf of the applicant-original plaintiff and Mr Bhandari, learned Counsel on behalf of respondent – defendant.

2. There is delay of 753 days in filing present Second Appeal which is sought to be justified by the applicant by contending that he was pursuing his remedy before wrong forum. By taking shelter of provisions of Sections 5 and 14 (2) of the Limitation Act, Mr Murkute would urge that the suit of the applicant for compensation came to be dismissed by learned Trial Court on 6th April, 2011 and an appeal carried against the same came to be

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dismissed on 29th September, 2014 by District Judge-1, Aurangabad. According to him, the applicant approached this Court in Writ Petition No.540 of 2016 seeking compensation and as such it has to be inferred that he was pursuing remedy before the wrong forum and he should be given benefit of sub-section (2) of Section 14 read with Section 5 of the Limitation Act. He would rely upon the judgment of this Court Bench at Goa, in the matter of **Mineria Nacional Limitada vs. Sociedade De Fomento Industrial Pvt. Ltd.**, reported in **2007 (109) Bom.L.R. 789**. In addition, the learned Counsel would rely upon the judgment of the Apex Court in the matter of **Ghasi Ram and others vs. Chait Ram Saini and others**, reported in **AIR 1998 SC 2476** so as to urge that the delay caused be condoned.

3. The prayer for condonation of delay is opposed by the learned Counsel appearing on behalf of the respondent on the ground that the benefit of Section 14 of the Limitation Act is not available to the applicant as he was not pursuing the remedy against the judgment of dismissal of the suit and appeal before the wrong forum. What was done by the present appellant is he was pursuing the remedy of grant of compensation in the original jurisdiction of this Court though, which was turned down on the same set of facts. According to him, the delay caused is not *bona fide*.

4. Considered the rival submissions. There is delay of 753 days in preferring this Second Appeal.

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5. The applicant filed Writ Petition No.2882 of 2010 seeking compensation i.e. the relief which is claimed in the suit in question. The said petition was withdrawn by the applicant with liberty to file a civil suit. The suit suffered dismissal, so did the appeal preferred by the applicant. As such, remedy of second appeal was available to the applicant. Instead of taking recourse to the remedy of second appeal, he had taken recourse to filing of second writ petition being W.P. No.540 of 2016. The said petition came to be dismissed on 19th July, 2016 by holding that the Civil Court has refused the prayer for grant of compensation and in the wake of such order of the Civil Court, the writ petition was not maintainable.

6. In the aforesaid backdrop, this Court cannot infer that the appellant was *bona fide* prosecuting his remedy before the writ Court against the judgment and decree of the Civil Court and the first appellate Court.

7. The application lacks bona fides. The delay is not at all explained. The factual matrix as narrated herein above, particularly the act on the part of the applicant does not qualify him to be held to be entitled for benefit of Section 14 of the Limitation Act.

8. So far as judgments in the matter of Ghasi Ram and Mineria Nacional Limitada (*supra*) cited on behalf of the applicant are concerned, those pertain to pursuing the remedy by the concerned party before a wrong forum. However, in the case in hand it cannot be inferred from the conduct of the applicant that he was not aware of his remedy. Rather, he

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has taken chance of filing repeated writ petitions before the Division Bench of this Court ignoring the statutory remedy available to him. The factual matrix of the present case and that of the judgments cited supra is altogether different.

9. In that view of the matter, Civil Application fails and stands rejected.

(N.W. SAMBRE, J.)

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