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

SECOND APPEAL NO. 718 OF 2011

Shaikh Kasim s/o Khaja,
Age: 82 years, Occu: Nil,
R/o. Raywadi, Tq. Loha,
Dist. Nanded, at present
R/o. 541, Vishnupuri, Navi Abadi,
Nanakpuri Vidyapeeth Nanded,
Tq. & Dist. Nanded ..APPELLANT

VERSUS

1. Shaikh Rasul s/o Khaja,
Age: 65 years, Occu: Agri.,
R/o. Raywadi, Tq. Loha,
Dist. Nanded
2. Nizamuddin s/o Md. Nawazsab,
Age: 64 years, Occu: Agri.,
R/o. Vishnupuri,
Tq. & Dist. Nanded ..RESPONDENTS

Mr M. K. Deshpande Advocate for appellant;
Mr M. G. Mustafa, Advocate for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 6th JUNE, 2017

ORAL ORDER :

Regular Civil Suit No. 28 of 2000 initiated by
present appellant-plaintiff for specific
performance in relation to land bearing block No.

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205 situated at Raiwadi, Tq. Loha, Dist. Nanded, by judgment and order dated 16th September, 2004, Civil Judge Junior Division, Nanded was pleased to dismissed the same.

2. Misc. Civil Application No. 46 of 2009 under Section 5 of the Limitation Act accompanied with memo of appeal under Section 96 of the Civil Procedure Code, questioning the dismissal of the suit was brought before learned District Judge-1, Kandhar. Learned District Judge noted absence of the appellant-original plaintiff and also his lawyer and rejected the said application, vide order dated 19th November, 2010, as such, Second Appeal.

3. Based on the rival submissions, substantial question of law that could be considered is, whether lower appellate Court has committed error in rejecting the application for condonation of delay, when substantial right to prefer an appeal is conferred by the statutory

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provisions of Section 96 of the Code of Civil Procedure?

4. After considering the rival submissions, though claim for interference at this stage in second appellate jurisdiction is objected by Mr Mustafa, learned Counsel for respondent No.1, in my opinion, by way of last chance and in the interest of justice, delay caused in preferring the appeal and non-appearance of appellant before the learned lower appellate Court needs to be condoned, subject to payment of costs of Rs.7,500/-(Rs. Seven Thousand and Five Hundred only) to be deposited before the lower appellate Court within a period of four weeks from today. The respondents-original defendants will be entitled for withdrawal of the same. The lower appellate Court shall decide the appeal of the appellant-original plaintiff on its own merit.

5. In case, if the amount of costs, as ordered is not deposited, the order dismissing the

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appeal, application for condonation of delay, shall govern the proceedings.

6. With the above observations, Second Appeal stands disposed of.

(N.W. SAMBRE, J.)

Tupe