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

SECOND APPEAL NO. 526 OF 2016

1. Keshav s/o Namdeo Dingare,
Age: 42 years, Occ: Agri.,
2. Pandurang s/o Namdeo Dingare,
Age: 33 years, Occ: Agri.,
3. Janardhan s/o Namdeo Dingare,
Age: 53 years, Occ: Agri.,
4. Sakharam s/o Raoji Dingare,
Age: 63 years, Occ: Agri.,
5. Arjun s/o Tukaram Dingare,
Age: Major, Occ: Agri.,

All above R/o. Pawliachiwadi,
Tq. Gevrai, Dist. Beed.

..APPELLANTS

VERSUS

1. Shamrao s/o Deosingh Jadhav,
Age: 34 years, Occ: Agri.,
2. Sahebrao s/o Deosingh Jadhav,
Age: 39 years, Occ: Agri.,

All above R/o. Pawliachiwadi,
Tq. Gevrai, Dist. Beed.

..RESPONDENTS

Mr D.R. Dhumal, Advocate for appellants;
Mr N.L. Jadhav, Advocate for respondent Nos. 1 & 2

CORAM : N.W. SAMBRE, J.

DATE : 6th JUNE, 2017

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ORAL ORDER :

Present second appeal can be disposed of on the following question of law :

Whether the lower appellate Court has committed an error of law in rejecting the application for condonation of delay moved by the respondents-original defendants?

2. The suit for possession being Regular Civil Suit No.390 of 2008 came to be decreed by Civil Judge, Junior Division, Georai on 19th April, 2014 against present appellants thereby directing the present appellants to deliver possession of the suit property to the respondents-plaintiffs.

3. An appeal under Section 96 of the Code of Civil Procedure was delayed by 117 days and ground cited was lawyer misguided the appellants.

4. The first appellate Court rejected the

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said application on the ground that blame as is sought to be passed on the lawyer is without any basis, as the same lawyer was appearing for the respondents in some other matter.

5. Having considered the above referred position as is reflected on record and the fact that the claim for condonation of delay is strenuously opposed by Mr. Jadhav, learned Counsel for the respondents-original plaintiffs, in my opinion, in the interest of justice, it will be appropriate to pass following order.

6. The order dated 17th February, 2017 passed by District Judge-2, Beed below Exhibit-1 in Misc. Civil Application No. 650 of 2014 is hereby set aside and it is ordered that delay caused in preferring first appeal, which is rejected by the said order, is hereby ordered to be condoned subject to payment of costs of Rs.5000/- (Rs. Five thousand only) to be deposited before the lower appellate Court within a period of four weeks from

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today.

7. The respondents-original plaintiffs will be entitled to withdraw the same.

8. If cost of Rs.5000/- as ordered is not deposited within a period of four weeks from today, present appeal shall be treated as dismissed, particularly in the back ground of default by the appellants in complying with the order.

9. The second appeal stands disposed of in above terms.

(N.W. SAMBRE, J.)

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