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

**CIVIL APPLICATION NO. 2096 OF 2016  
IN/WITH  
SECOND APPEAL (ST) NO.16305 OF 2011**

1. Shivaji Pandit Kirwale,  
Age: 26 years, Occ: Agri.,  
R/o. Acharya Takli, Tq. Parli,  
Dist. Beed.
2. Prabhakar s/o Narayan Rode,  
Age: 49 years, Occ: Agri.,  
R/o. Kanherwadi, Tal. Parli,  
Dist. Beed. ..APPLICANTS

VERSUS

1. Chabubai w/o Sriram Sabale,  
Age: 60 years, Occ: Agri.,  
R/o. Kaudgaon Sabale, Tq. Parli,  
Dist. Beed.
2. Vasant s/o Eknathyhrao Acharya  
Age: 53 years, Occ: Agri.,  
R/o. Acharya Takli, Tal. Parli,  
Dist. Beed. ..RESPONDENTS

Mr Ganesh G. Gadhe, Advocate for applicants  
Mr S.H. Jagiasi, Advocate for respondent No.1;  
Mr M.V. Thorat, Advocate for respondent No.1

**WITH  
CIVIL APPLICATION NO.7519 OF 2017  
IN  
SECOND APPEAL (ST) NO.16305 OF 2011**

Sheshrao Narayan Rode,  
Age: 70 years, Pensioner,  
r/o Prabudh Nagar, Ambajogai,  
Dist. Beed & anr ...APPLICANTS

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## VERSUS

Shivaji Pandit Kirwale,  
Age: 34 years, Occ: Agri.,  
r/o. Acharya Takli, Tal. Parli,  
Dist. Beed & ors

...RESPONDENTS

Mr S.H. Jagiasi, Advocate for applicants  
Mr G.A. Gadhe, Advocate for respondent Nos.1 & 2;  
Mr M.V. Thorat, Advocate for respondent No.3

**CORAM : N.W. SAMBRE, J.****DATE : 9th JUNE, 2017****ORAL ORDER :**

Special Civil Suit No. 98 of 1996 was initiated by the appellants on 17<sup>th</sup> August, 1996 for specific performance of agreement to sell and perpetual injunction. The agreement was executed on 5<sup>th</sup> April, 1991.

2. The suit of the appellants came to be partly decreed on 29<sup>th</sup> September, 1997, whereby defendant Chhabubai was ordered to refund amount of Rs.18,000/- with interest @18% p.a. till date of realisation of the decretal amount.

3. So far as other relief as regards specific performance, declaration and injunction is

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concerned, same was rejected. The judgment to the extent of refusal to grant relief for specific performance and injunction was the subject matter of appeal before the first appellate Court being Regular Civil Appeal No. 219 of 1997. The Additional District Judge, Beed, vide judgment and order dated 12<sup>th</sup> August, 2003 was pleased to dismiss the appeal of the appellants-original plaintiffs. As such, present second appeal.

4. There is inordinate delay of about 7 years in preferring the second appeal and in support thereof, Civil Application No.2096 of 2016, seeking condonation of delay is accompanied with the memo of appeal.

5. Perusal of the application depicts that delay of 2465 days is sought to be explained by citing bonafide reason that there was communication gap between the appellants and their advocate. There is hardly any documentary evidence to that effect brought on record so as to substantiate the

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said delay.

6.           Apart from above, if the merits of the appeal are to be examined, the interest of the present appellants is already safeguarded by the Civil Court by directing refund of the earnest money, that too with interest @18% p.a.

7.           In the aforesaid backdrop and in view of the concurrent findings of the Courts below, I hardly notice any substantial question of law involved in the present appeal.

8.           As such, prayer for condonation of delay stands rejected. Consequently, the appeal also stands dismissed.

9.           As a consequences of dismissal of appeal, pending civil applications in the appeal also stand disposed of.

**(N.W. SAMBRE, J.)**