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

**11 CIVIL APPLICATION NO. 5379 OF 2017
IN
SECOND APPEAL NO. 313 OF 2001**

HIDAYATULLAH INAYATULLAH
VERSUS
STATE OF MAHARASHTRA AND ORS

...
Advocate for Applicant : Narwadkar Mrigesh D.
AGP for Respondent Nos. 1 to 3: Mr. P.K. Lakhotiya
Advocate for Respondent Nos. 4-A to 4-E: Ms. A.N. Ansari
...

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 18th DECEMBER, 2017.**

PER COURT:-

1. By this application, the applicant prays for condonation of delay of 1865 days caused in filing this Civil Application seeking recalling of the conditional order dated 31.01.2012.

2. Learned counsel for the applicant submits that, the Second Appeal No.313/2001 was admitted by this Court considering the substantial question of law involved, and interim relief was granted. By the conditional order dated 31.01.2012 passed by this Court, the Appellant was directed to supply paper-book and decree forms within four weeks, failing which, the Second Appeal was to be dismissed. Though, the learned counsel for the Appellant informed the said party, as the response was delayed, the Second Appeal was dismissed.

3. Learned advocate for contesting Respondent No.4

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appearing through LR's and, the learned Asstt. Govt. Pleader have opposed the Civil Application. Learned Asstt. Govt. Pleader submits that, heavy cost be imposed in the event the Court is inclined to allow the application and some portion of the cost be remitted to the High Court Bar Library.

4. Upon considering the reasons set out in the application and the submissions of the learned advocates, since the Second Appeal involves an immovable property, and keeping in view that after the appeal was admitted in 2001, interim relief was granted to the Appellant, this application is allowed. The delay is condoned subject to payment of cost of Rs.10,000/- (Rupees ten thousand) which will be deposited in this Court on or before 19.01.2018 and Rs.2,000/- shall be deposited in the High Court Bar Library, Aurangabad Bench, over and above the amount of Rs.10,000/-. Copy of the paper-book and the decree forms shall be deposited in this Court on or before 31.01.2018.

5. If either of the above three conditions are not complied with, this order shall stand recalled, the Civil Application shall stand rejected and the Second Appeal shall stand dismissed without reference to the Court w.e.f. 01.02.2018.

6. The applicant shall not seek extension of time for complying with the above stated conditions.

7. Since, the LR's of the contesting deceased non-applicant no.4-D are on record, learned counsel for the Respondent submits that, leave may be granted to Respondent No.4-D to withdraw the said amounts so as to be distributed equally amongst the five LR's of the deceased Respondent No.4. Leave is granted. Respondent No.4-D would be at liberty to withdraw the said amount subject to identification by the learned advocate.

8. In the event of all above conditions being implemented, list the Second Appeal for final hearing on 08.02.2018.

(RAVINDRA V. GHUGE, J.)