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

**CIVIL APPLICATION NO.12146 OF 2017
IN/WITH
SECOND APPEAL (ST.) NO.30241 OF 2017
WITH
CIVIL APPLICATION NO.12147 OF 2017**

1. Subhash s/o Chanderrao Dorve,
Age : 57 years, Occu. Agril.,
R/o Hanchnal, Tq. Nilanga,
Dist. Latur
 2. Raosaheb s/o Chanderrao Dorve,
Age : 44 years, Occu. Service,
R/o CIDCO, New Nanded,
Dist. Nanded
- ..APPLICANTS/
(Orig. Defendants)

VERSUS

Sunil s/o Digambarrao Pawar,
Age : 35 years, Occu. Service & Agril.,
R/o Taroda (Bk),
Tq. & Dist. Nanded

..RESPONDENT
(Orig. Plaintiff)

Mr S.P. Urgunde, Advocate for applicants;
Mr S.S. Gangakhedkar, A.G.P. for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 25th September, 2017

ORAL ORDER:

Heard.

2. For the reasons stated in Civil Application No.12146 of 2017,
application stands allowed and delay stands condoned.

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3. The substantial question of law which requires consideration is, whether the lower appellate court has committed an error in refusing to condone the delay caused in preferring first appeal.

4. The statutory remedy available against the judgment of the Trial Court postulates that the said remedy should have been effectively made available to the applicants. No doubt, there is no satisfactory explanation, however, for the said cause, delay of 151 days, cannot be considered to be with an intention to defeat the object of the decree for specific performance.

5. Considering the factual background and the fact that the applicants volunteer to pay costs of Rs.5,000/- towards condonation of delay caused in preferring second appeal and additional costs of Rs.5,000/- towards condonation of delay caused in preferring first appeal. Thus, the delay caused in preferring first appeal as also second appeal stands condoned, subject to payment of costs of Rs.10,000/-.

6. In the aforesaid background, applicants-appellants shall deposit costs of Rs.10,000/- before the lower appellate court within two weeks from today, to which the respondent is entitled.

7. The first appeal be heard and decided by learned District Judge on merits expeditiously. The applicants shall not seek any further adjournment and shall co-operate the lower appellate court for expeditious disposal of

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the appeal.

8. If an application for stay to the execution of decree passed by the Trial Court is moved, it is expected of the lower appellate court to decide the same at the earliest.

9. With above observations and directions, second appeal stands allowed.

10. In view of disposal of second appeal, Civil Application No.12147 of 2017 does not survive and stands disposed of.

(NITIN W. SAMBRE, J.)

amj