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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CIVIL APPLICATION NO.45/2017
IN
SECOND APPEAL (St.) NO.37975/2016**

Babasaheb Vaijanath Lokhande.
...Applicant..

Versus

Sow.Ksturabai Satwaji Nandapurkar.
...Respondent...

.....

Shri P.S. Paranjape, Advocate for applicant.
Shri P.M. Kalani, Advocate for respondent.

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CORAM: SUNIL P. DESHMUKH, J.

DATE: 24.03.2017

ORDER :

- 1] Heard learned counsel for the parties.
- 2] It appears that the decision had been rendered by the appellate Court on 19.1.2015 in Regular Civil Appeal No.84/2012. Thereafter, it took some time for the applicant to get knowledge of the said fact as there was communication gap between present applicant and his counsel. The applicant submits, thereafter appropriate legal advice was not received by him. In view of various

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advices being received in confusion, lot of period got consumed and in the execution, an application came to be made. However, the remedy to the situation lies in filing second appeal came to be realized in the process after consumption of time. Delay is neither intentional nor deliberate.

3] Learned counsel for the respondent submits that the application lacks giving proper particulars like the dates of receiving advices and instructions. He, therefore, submits that the delay cannot be said to be properly explained and requests for rejection of the application.

4] Having regard to that, although it is being contended that particulars are not being given, the contention of the applicant about him being given various legal advices does not appear to be seriously in dispute.

5] In the circumstances, taking into account the guidelines of the Supreme Court in the case of *Collector, Land Acquisition, Anantnag v. Mst. Katiji* (**AIR 1987 SC 1353**), it would be expedient to have contest and end of the litigation on merits and not on technicalities. As such, in the process inconvenience caused to the other

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side may be made good by awarding certain costs.

6] In view of aforesaid, the delay is condoned. The application stands granted in terms of prayer clause (B) on the condition of payment of costs of Rs.7500/- by the applicant to the respondent.

7] Learned counsel for the applicant draws my attention to the fact that the applicant had already deposited a sum of Rs.25,000/- in this Court in the interim relief application. As such, the respondent – decree holder would be at liberty to withdraw Rs.7500/- towards costs from the amount so deposited by the applicant pursuant to the order on interim relief application.

8] Civil application accordingly stands disposed of.

(SUNIL P. DESHMUKH, J.)