

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3362 OF 2017

Pranav Constructions Systems Pvt. Ltd. Petitioner

versus

M/s S.S. Engineering and Consultants ... Respondent

.....

- Mr.K.K. Dastoor with Ms. Neha Naik, Advocate i/b. Phoenix Legal, Advocate for the Petitioner.
- Mr.P.D. Dalvi, Advocate i/b. P.C. Kansara, Advocate for the Respondent.

**CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 29th MARCH, 2017.**

P.C. :

1. This petition is directed against the order dated 10/11/2016 passed by the learned District Judge-4, Thane in Civil M.A. No.293/16 thereby rejecting the prayer of condonation of delay of 546 days. As the application for delay is rejected in unnumbered appeal and therefore delay was not allowed at threshold. The learned counsel for the respondent at the outset took objection on the point of maintainability of the writ petition in view of the ratio laid down in the full bench

Nesarikar

judgment of the Supreme Court in *Sheodan Singh, versus Daryao Kunwar, reported in AIR 1966 Supreme Court 1332.*

The learned counsel for the petitioner on this point has relied on the judgment of *Chandi Prasad and Others, versus, Jagdish Prasad and Others, reported in (2004) 8 Supreme Court Cases 724.*

2. I have gone through the above cited cases and the relevant portion in Sheodan Singh's case at paragraph No.13, which reads as follows;

“the result that the decision given on the merits also becomes useless as between the parties. We are therefore of opinion that where a decision is given on the merits by the trial Court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial Court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.”

3. Thus, considering the facts and circumstances and the law made out in Sheodan Singh's case, liberty given to the petitioner to withdraw the appeal and file second appeal.

4. With this, the writ petition stands disposed of.

(MRIDULA BHATKAR, J.)