

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7991 OF 2016**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.S.M. Railkar, Advocate for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : 02/02/2017

P.C.:

1. Not on board. At the request of Mr.Railkar taken up for admission.
2. Heard Mr.S.M. Railkar, learned Counsel for the petitioner.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 8.1.2016 passed by the learned Principal District Judge, Sindhudurga-Oras in Civil Misc. Application No.43/2014. By that order, the learned P.D.J. rejected the application for condoning the delay of 339 days in filing the substantive First Appeal against the judgment and decree dated 3.9.2013 passed by the learned Civil Judge, Junior Division, Malwan in Regular Civil Suit No.70/1987.

4. By judgment and order dated 3.9.2013, the learned trial Judge decreed the suit. The petitioners preferred appeal before the learned District Judge. Since there was delay of 339 days in filing the appeal, they took out application for condonation of delay. By the impugned order, the learned P.D.J. rejected that application.

5. In the case of ***Shyam Sunder Sarma vs. Pannalal Jaiswal and others, AIR 2005 SC 226***, the Apex Court referred to the decision of ***Sheodan Singh vs. Daryao Kunwar, AIR 1966 SC 1332***. In that case, it was held thus:

"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."

6. Mr. Railkar, therefore, seeks permission to withdraw the petition with liberty to file Second Appeal. He submitted that the time spent by the petitioner in prosecuting this Petition from

7.5.2016 till today may be excluded while considering the application for condonation of delay.

7. In view thereof, on the motion made by Mr. Railkar, the petition is allowed to be withdrawn with liberty as prayed for. The time spent by the petitioner between 7.5.2016 till today in prosecuting this Petition shall be excluded while considering the application for condonation of delay. Office is directed to return the certified copies filed by the petitioner. Order accordingly.

(R. G. KETKAR, J.)