

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1475 OF 2016

IN

SECOND APPEAL (ST.) NO. 19428 OF 2016

ALONG WITH

CIVIL APPLICATION NO. 1476 OF 2016

The State of Maharashtra and others

... Applicants

vs.

Subhash Budhaji Bhadane and another

...Respondents

Mr. Ameet Palkar, Assistant Government Pleader, for the Applicant in both Civil Applications and for the Appellant in Second Appeal.

Mr. Anilkumar Patil for Respondent No.1.

*Mr. Suresh D. Thakare, Accounts Officer, Education Department, Nashik--
Appellant No.3, present in Court.*

CORAM: S.J. KATHAWALLA, J.

DATE: 10th JULY, 2017

P.C.

Perused Civil Application No. 1475 of 2016 seeking condonation of delay of 357 days in filing the above Second Appeal.

2. On 22nd April, 2015, the Principal District Judge, Nashik, passed the judgment and decree in Regular Civil Appeal No. 513 of 2012 which the Appellants seek to impugn in the above Second Appeal. On 18th May, 2015, office of the District Government Pleader, Nashik, forwarded his opinion/appeal proposal to the Law and Judiciary Department, Mantralaya, Mumbai. The last

date for filing of the Second Appeal was 21st July, 2015. After the permissions were sought, it was realised that certified copy of the judgment and decree was not obtained. The same was applied for on 11th May, 2016 i.e. more than one year after the judgment and decree dated 22nd April, 2015 was passed in Regular Civil Appeal No. 513 of 2012. The Assistant Government Pleader drafted the Second Appeal and Civil Application for stay only after the certified copy of the judgment and decree was obtained. It is submitted that in view of the default on the part of the District Government Pleader in applying for a certified copy of the judgment and decree for a period of one year, the State of Maharashtra and the other Appellants should not be made to suffer. On a query raised by the Court as to what action is taken against the District Government Pleader for dereliction of his duty to apply for a certified copy for more than a year, the Court is informed that no action has been taken so far. On a further query raised by the Court as to why the Appeal was not filed by him on an undertaking that the Appellants will provide a certified copy of the judgment and decree upon being available, the learned Assistant Government Pleader is unable to provide an answer. The Civil Application therefore deserves to be dismissed. However, since the learned Assistant Government Pleader submits that the State of Maharashtra and the other Appellants should not be made to suffer in view of the lapse on the part of the District Government Pleader and further since Appellant No. 3 who is present in Court undertakes to pay cost of

Rs. 25,000/- to Respondent No.1, who is present in Court to oppose the Civil Application.

3. In view of the above, the above Civil Application No. 1475 of 2016 is allowed, subject to payment of cost of Rs. 25,000/- by the Appellants to Respondent No. 1 within a period of three weeks from today. Upon the cost being paid, office to number the Second Appeal, subject to all the other objections being removed by the Advocate for the Appellants. Respondent No. 1 waives service of the Second Appeal. However, the Appellants shall serve copies of the Second Appeal on the Advocate for Respondent No.2 by speed post/registered post A.D. and/or by hand delivery and file his affidavit proving service on Respondent No.2. Place the Second Appeal for admission on 7th August, 2017.

Civil Application No. 1475 of 2016 is accordingly disposed off.

(S.J. KATHAWALLA, J.)