

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

WRIT PETITION NO.10703 OF 2004

Shri Harischandra Pandurang Parhad ... Petitioner

Vs.

Smt.Tarabai Budhaji Sutar & Ors. ... Respondents

Mr.S.D. Patil for the Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 13, 2017**

P.C. :

1. This is a Writ Petition which is directed against the order dated 18.11.2004 thereby rejecting the Miscellaneous Civil Application No.56 of 2004 praying for condonation of delay of 82 days in filing the First Appeal. The Suit No.21 of 1999 for possession and declaration filed by the respondents was decreed on 31.10.2003 against which the defendant i.e., the petitioner filed First Appeal. However, there was delay of 82 days. It was submitted that the delay was on account of health of the petitioner. However, the appellate Court found it not a sufficient ground to condone the delay and hence, the application was rejected.

2. On perusal of the record, it is found that on 24.8.2005, this Court granted Rule. However, since this being a rejection of condonation of delay application in First appeal, a Writ Petition does not lie and a Second Appeal would lie.

3. In view of this, the learned Counsel for the petitioner seeks permission to withdraw the petition with liberty to file a Second Appeal.

4. Permission to withdraw with liberty is granted. Writ Petition is accordingly allowed to be withdrawn and disposed of.

(MRIDULA BHATKAR, J.)