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

**SECOND APPEAL NO. 816 OF 2016
WITH
CIVIL APPLICATION NO.1610 OF 2016
IN
SECOND APPEAL NO.816 OF 2016**

M/s Strategem Engineers ...Appellant.
vs
Anuradha Enterprises ...Respondent.

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Ms Prabha Uday Badadare and Mr Omkar Nagwekar for the Appellant
Mr Sanjay P. Deo for the Respondent

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**CORAM : N.M.JAMDAR, J.
APRIL 25, 2017**

ORAL ORDER:

By this appeal, the Appellant has challenged the order passed by the District Court, Pune dated 19th September, 2016 dismissing the application for condonation of delay.

2 Various orders have been passed in the Second Appeal from time to time. On 21st April, 2017, after hearing parties at length, the following order was passed:-

- “ *Heard learned Counsel for the parties.*
- (2) *In this Second Appeal, the order passed by the learned District Judge, Pune rejecting the application for condonation of delay, is challenged.*

- (3) *An Appeal was filed before the learned District Judge challenging the judgment and order passed by the learned Civil Judge, Senior Division, Pune. The learned Civil Judge had directed the Appellant to pay an amount of Rs.11,86,776/- with interest at the rate of 18 % p.a.*
- (4) *While rejecting the application for condonation of delay, the learned District Judge, found that there were no sufficient reasons stated.*
- (5) *Having gone through the application for condonation of delay, the conclusion of the learned District Judge that there are no sufficient reasons cannot be faulted. The Appellant is a Company and the only reason given is that its Director was frequently travelling. There is no other reason. There is a medical ground given but no cogent material is placed and as rightly opined out by the learned District Judge that they are other officers who could have followed the matter.*
- (6) *The learned Counsel for the Respondent, points out this has been the conduct of the Appellant throughout and the delay is deliberate so as to avoid the payment of the amount and to delay the inevitable consequences as long as possible. The grievance by the learned Counsel for the respondent is fully justified.*
- (7) *Since it is a money decree that is being challenged in the First Appeal, it was prima facie put to the Appellant that if the Appellant is ready and willing to deposit the entire*

decreetal amount, which the Respondent will be entitled to withdraw, upon furnishing such security, the Court may consider restoring the Appeal and condone the delay. Perusal of the Farad Sheet would show that, on various dates, the Court has granted time for deposit of the amount. Even today, no instructions are forthcoming, except the statement that the applicant is travelling. The reason of travel is stated to be rejected. The Appeal could have been dismissed today itself. However, by way of indulgence, place the Appeal on Board on 25 April 2017 under the caption “for dismissal”. It is made clear to the learned Counsel that, unless the entire decreetal amount, interest minus the deposit already made, is not deposited in this Court by the next date or such other date, the Court may dismiss the Appeal without any further arguments.”

3 As to the query whether the Appellant is ready to deposit the amount as indicated in the order dated 21st April, 2017, the learned Counsel for the Appellant submitted that the Appellant is not ready to deposit the amount.

4 In the impugned order the learned District Court has taken note of the reason given by the Appellant for delay, which was only that the Director of the Appellant was travelling on business. The Appellant is a Company. Learned District Judge has rightly noted that

there could be other officers who could have attended the proceedings. In today's day and age of communication technology it is impossible to believe that the director was not in touch with his own office even when he was travelling. The reason given for condonation of delay is so frivolous that the only conclusion is that it is a deliberate attempt on the part of the Appellant to delay the payment of money as directed under the decree. Even till date the Appellant is not ready to deposit amount. The decree being a money decree, the Appellant would have deposited the amount in the First Appeal. This Court has shown indulgence to condone the delay if the Appellant was ready and willing to deposit the decretal amount, to which also the Appellant is not agreeable. A detailed order is already passed on 21st April, 2017 putting the Appellant to notice of the consequences that may ensue.

5 In these circumstances, there is no error in the view taken by the learned District Judge, Pune. No question of law arises much less any substantial question of law. The Second Appeal stands dismissed.

6 As and when the Respondent will take out an application for execution of decree, the amount deposited by the Appellant will be entitled to be recovered in pursuance to the execution proceedings.

7 In view of disposal of Second Appeal, nothing survives in the Civil Application. The Civil Application is disposed of accordingly.

(N.M.JAMDAR, J.)