

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10176 OF 2015**

Shri Suryakant Tatoba Salunkhe

..Petitioner.

Vs

Sou. Mangal Suryakant Solunkhe

.. Respondent

Mr. Samarth More i/b Mr.Vishwanath S. Talkute, Advocate for
Petitioner.

**CORAM : R.G.KETKAR,J.
DATE : 05/01/2017**

PC:

1. Not on Board. At the request of Mr. Talkute, taken up for admission. Heard Mr.Samarth More, learned counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 18.7.2013 passed by the learned Ad-hoc District Judge-1, Satara in Misc.Civil Application No. 235 of 2011. By that order, the learned District Judge dismissed the application taken out by the petitioner for condonation of delay of six months in filing substantive appeal challenging the judgment and decree dated 27.4.2011 passed by the learned trial Judge in Special Civil Suit No.172 of 2006.

3. In the case of Shyam Sundar Sarma Vs. Pannalal Jaiswal, (2005) 1 Supreme Court Cases 436, the Apex Court has considered earlier decision in Sheodan Singh Vs. Daryao Kunwar, AIR 1966 SC 1332 and held that an appeal when dismissed on

refusal to condone delay is nevertheless a decision in the appeal and amounts to a decree. In view thereof, Mr.More seeks permission to withdraw this petition with liberty to file Second Appeal challenging the impugned order.

4. On the motion made by Mr.More, Petition is allowed to be withdrawn with liberty as prayed. Registry is directed to return certified copies to the petitioner. The time spent by the petitioner from 10.10.2013 till today in prosecuting this petition shall be excluded. It is made clear that I have not examined merits of the case. Order accordingly.

(R.G.KETKAR, J.)