

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2949 OF 2013

Shri Shankar T. Mane ..Petitioner
Vs.
Shri. Keru Aba Kamble and Others ..Respondents

Mr. Manoj A. Patil, for the Petitioner.

Mr. Chintan Shah i/b Sandesh Patil, for Respondent No.1.

CORAM :- **B.P.COLABAWALLA, J.**
DATE :- **DECEMBER 6, 2018.**

P. C.:

By this Petition the Petitioner challenges the order dated 11th October, 2011 passed below Exhibit-1 in Miscellaneous Civil Application No. 220 of 2008.

2 By this application, the Applicant sought a condonation of delay of 517 days in filing the Appeal against the judgment and decree passed in Regular Civil Suit No. 163 of 2000. This delay was not condoned by the impugned order and hence the Appeal filed by the Petitioner came to be dismissed. It is this order that is challenged in the present Writ Petition.

3 The learned counsel appearing on behalf of the

Petitioner fairly pointed out to me that this Court in the case of Smt Taibai Motiram Bhagat and Others v/s Shri. Gopinath Babu Patil (Writ Petition No. 7869 of 2012 decided on 1st December, 2014) has held that in a situation like the present one, the remedy of the Petitioner would be to file a Second Appeal and not a Writ Petition.

4 In these circumstances, the learned counsel appearing on behalf of the Petitioner seeks leave to withdraw this Writ Petition with liberty to file a Second Appeal challenging the order dated 11th October, 2011.

5 In view of the aforesaid circumstances, the Writ Petition is dismissed as withdrawn with liberty as prayed.

6 Considering that this Petition has been pending since 2013, the Second Appellate Court may consider the pendency of this Writ Petition at the time of any application for condonation of delay in filing the Second Appeal.

(B. P. COLABAWALLA, J.)