

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

**CIVIL APPLICATION NO. 81 OF 2018
IN
SECOND APPEAL (ST) NO. 21257 OF 2017**

Shri.Dilip Baburao Pagar ...Applicant
Versus
Shri.Ishwar Ahsok Thete (dead) & Ors. ...Respondents

**WITH
CIVIL APPLICATION NO. 82 OF 2018
IN
SECOND APPEAL (ST) NO. 21257 OF 2017**

Shri.Dilip Baburao Pagar ...Applicant
Versus
Shri.Ishwar Ahsok Thete (dead) & Ors. ...Respondents

Mr.P.N. Joshi for the Applicant.

Mr.R.N.Gite for the Respondent No.1A.

CORAM : M. S. SONAK, J.

DATE : 21st FEBRUARY 2018

P.C.

1. Heard the learned counsel for the parties.

2. Mr.Joshi, the learned counsel for the applicant points out that within 90 days from the impugned order, Writ Petition No.7439/2013 had been instituted to challenge the same. However,

by order dated 13th July 2017, this Court, upon noticing that no Writ petition lie against the impugned order, granted leave to the applicant to institute the second appeal. He submits that since thereafter this Second Appeal has been instituted.

3. Mr.Gite, the learned counsel for the respondent submits that the delay in this case is almost of four years and there is no satisfactory explanation. He submits that, the applicant cannot take advantage of his own wrong for instituting non maintainable proceedings.

4. Although, in this case, the delay is quite substantial, the explanation for the same is equally substantial and deserves acceptance. Nodoubt, some prejudice, is bound to occasion to the respondent but nature of prejudice is such that the same can be compensated in terms of costs. This is not a case where the applicant, was not agitating against the impugned order.

5. Upon due consideration of all the aforesaid circumstances, the delay in institution of the Second Appeal is hereby condoned subject to payment of cost of Rs.5,000/- to be paid within a period of two weeks from today.

6. The costs to be either paid or deposited in this Court within a period of two weeks from today. If deposited the respondent shall be at liberty to withdraw the same.

7. The Civil Application for condonation of delay is disposed of in the aforesaid terms.

8. Place the Second Appeal on 22nd February 2018 on Supplementary Board.

(M. S. SONAK, J.)