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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.73 OF 2018

IN

SECOND APPEAL (ST) NO.9771 OF 2017

WITH

CIVIL APPLICATION NO.1807 OF 2017

Pranav Construction Systems Pvt. Ltd. ..Applicant.

V/s.

M/s. S.S. Engineering & Consultants ..Respondent.

Mr.Nimay Dave with Mr.Vishwas Deo I/b. Phoenix Legal for the applicant.

Mr.Panka C.Kansara for the respondent.

Srikrishna
Ananth
Sharma

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by Srikrishna
Ananth Sharma
Date: 2018.10.06
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CORAM : A.M.DHAVAL, J.

DATE : SEPTEMBER 26, 2018

P.C.:-

Heard the advocates for both the parties.

2. In Special Civil Suit No.642/2008, the learned Civil Judge, S.D. Thane on September 29, 2014 passed a decree against the present applicant for recovery of Rs.22,32,828/- along with interest. This judgment was challenged by way appeal before the District Court, Thane but there was delay of 546 days in filing the

appeal. An application for condonation of delay being Civil M.A. No.293/2016 was rejected on November 10, 2016.

3. Instead of filing a Second Appeal, Writ Petition No.3262 of 2017 was filed. The position regarding maintainability of the second appeal was not clear. The said writ petition was permitted to be withdrawn and permission was granted to file second appeal by order dated March 29, 2017. Second appeal was filed on April 4, 2017.

2. Technically, there is delay of 52 days but it is not disputed that it was on account of *bona fide* wrong legal advice given for filing the writ petition. Considering the facts, the delay deserves to be condoned. Hence the application is allowed.

3. Civil Application No.73 of 2018 is allowed in terms of prayer clause (a).

4. Registry to take up the Second Appeal for scrutiny as per CMIS date.

5. Advocate Mr.Kansara waives service for the respondent

in the Second Appeal. The appellant to supply copies of appeal memo, stay application and other documents to advocate Mr. Kansara.

6. Ad-interim relief to continue till the next date.

(A.M.DHAVAL, J.)