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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8177 OF 2018

M/s.Aries Cadd Services & Ors.	...Petitioners
V/s.	
Bank of India	...Respondent

Mr.Nand Lal Agrawal for the Petitioners.

Mr.Anant B. Shinde i/b Anant B. Shinde & Co. for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 10TH OCTOBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioners have impugned the order dated 7th August, 2017 passed by the Additional Sessions Judge, Thane rejecting the application filed by the petitioners below Exhibit – 1 in Miscellaneous Civil Application No.193 of 2015 *inter-alia* praying for condonation of delay of 188 days in filing the appeal.

2. Learned counsel appearing for the respondent raises a preliminary issue of maintainability of this writ petition on the ground that the remedy of the petitioners, if any, would be by way of second appeal in view of the application filed by the petitioners for condonation of delay in filing the appeal having been rejected.

3. Learned counsel for the respondent invited my attention to the judgment of the Hon'ble Supreme Court in case of **Shyam Sunder Sharma vs. Pannalal Jaiswal & Ors., 2005 (1) Mh.L.J. 340** in support of his submission.

4. A perusal of the order clearly indicates that the application for condonation of delay in filing the miscellaneous civil application has been rejected. In my view, as a result of dismissal of the application for condonation of delay, consequently the miscellaneous civil application filed by the petitioners also stands rejected. The remedy of the petitioners thus would be to file the second appeal under section 100 of the Code of Civil Procedure, 1908.

5. The writ petition is accordingly dismissed as not maintainable. It is made clear that if any second appeal is filed by the petitioners impugning the order passed by the learned District Judge, the petitioners can apply for exclusion of time in prosecuting this petition in good faith and with due diligence under section 14 of the Limitation Act. There shall be no order as to costs.

Vasant
Anandrao Idhol

Digitally signed by
Vasant Anandrao Idhol
Date: 2018.10.11
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(R.D. DHANUKA, J.)