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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**934 CIVIL APPLICATION NO.880 OF 2019
IN FAST/38036/2018**

**SANGITA SAYAJIRAO DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Patil Ganesh Vilasrao
AGP for Respondents : Mr. S.J. Salgare

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**CORAM : P.R. BORA, J.
DATED : 16th JANUARY, 2019.**

PER COURT:-

. Issue notice to the respondent. The learned AGP Shri Salgare waives notice for the respondent-State.

2. The delay of 1451 days has occurred in filing the present appeal by the appellant who is the original claimant. The learned counsel appearing for the applicant submitted that the reference application filed by the present applicant has been dismissed by the reference Court only on the ground that he did not adduce any evidence in support of his claim. It is the further contention of the applicant that the counsel who was representing him before the reference Court died during the pendency of the

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reference application. It is further contended that the aforesaid fact was not within the knowledge of the applicant and that is the reason that he could not approach this Court within the stipulated period of limitation.

3. The learned AGP Shri Salgare has strongly opposed for condoning the delay stating that even minimum particulars are not provided by the applicant to justify the delay occasioned in filing the appeal. After having considered the submissions made and after having perused the impugned order it appears to me that since the reference application has not been decided on merits, opportunity needs to be given to the present applicant to prosecute the present appeal on merits and consequently prosecute the reference application also on merits. However, I find substance in another submission made by the learned AGP that the applicant shall be dis-entitled from claiming interest of the intervening period which is a huge period of more than 18 to 19 years after filing of the reference application.

4. The reference application was admittedly

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filed in the year 2000. The same has been dismissed by the reference Court vide order passed on 24.09.2014. In the order, the reference Court has specifically mentioned that despite giving ample opportunities to the applicant to adduce evidence from his side, since he failed to adduce any evidence there was no other alternative before the said Court except to dismiss the reference application. Though the reference application was dismissed in the year 2014, the applicant approached this Court in December 2018. It appears to me that the applicant has not shown the required diligence in prosecuting his matter. Merely saying that the death of his counsel was not within his knowledge may not absolve the applicant from his obligation to take care of his own matter and to keep track of the progress of his matter. In the circumstances, there is substance in the alternate prayer made by the learned AGP to dis-entitle the applicant from claiming interest of the period of delay which has been made because of in action on his part. In view of the submissions made, the following order is passed:

ORDER

i) The delay caused in filing the appeal is condoned. The appeal be registered in accordance with law.

ii) It is clarified that in the event of his success in the appeal, the applicant shall not be entitled for the interest of intervening period of twelve years.

iii) The civil application stands disposed of.

iv) On registration of the appeal, issue notice to the respondent. The learned AGP Shri Salgare waives notice for respondent-State. Service complete.

v) List the appeal for final disposal on 17.01.2019.

(P.R. BORA, J.)

Mujaheed//