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

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.3998 OF 2019**

|                     |               |
|---------------------|---------------|
| Anil Vilas Satpute  | ..Petitioner. |
| V/s.                |               |
| Shriram Corporation | ..Respondent. |

Mr.Vinod P.Sangvikar for the petitioner.

None for the respondent.

**CORAM : M.S.SONAK, J.**

**DATE : APRIL 9, 2019**

**P.C.:-**

Heard Mr.Sangvikar, learned counsel for the petitioner

2. Challenge in this petition is to the order dated February 28, 2019 by which learned District Judge has dismissed the petitioner's application seeking condonation of 142 days delay in instituting an appeal against the judgment and decree dated April 25, 2018 in Summary Civil Suit No.4/2016 by the learned trial Judge, Ichalkaranji.

3. In *Shyam Sundar Sarma V/s. Pannalal Jaiswal and others*<sup>1</sup>, the Hon'ble Supreme Court has held that dismissal of an appeal for default or bar of limitation cannot be treated at par with the non-filing of an appeal or the withdrawal of an appeal, therefore, when the appeal

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<sup>1</sup> 2005 (1) SCC 436

is dismissed on refusal to condone the delay, the decision is, notwithstanding, a decision in appeal. This means that the impugned order amounts to dismissal of the petitioner's appeal against the decree dated April 25, 2018. As against such a dismissal, the petitioner has remedy of instituting a second appeal. Accordingly, there is no necessity to entertain the present petition. But liberty can always be granted to the petitioner to institute a second appeal.

4. In view of the aforesaid position, learned counsel for the petitioner seeks leave to withdraw this petition with liberty to institute a second appeal. However, learned counsel seeks for some interim protection, since, he points out that an arrest warrant has already been issued against him in execution of the decree dated April 25, 2018.

5. Mr.Sangvikar states that the petitioner, without prejudice to his rights and contentions, is ready to deposit fifty percent of the decretal amount in this Court within a period of four weeks from today.

6. Considering the fact that an arrest warrant has already been issued and the petitioner is offering to secure atleast fifty percent of the decretal amount, it is a case for grant of some interim protection.

7. Accordingly, this petition is disposed of by passing the following order :-

a) Leave is granted to the petitioner to withdraw this petition and the petition is disposed of as withdrawn with liberty to institute a

second appeal;

- b) Arrest warrant issued against the petitioner is stayed upto June 10, 2019 subject to the petitioner depositing in this Court fifty percent of the decretal amount on or before May 3, 2019 without seeking any extension;
- c) If no such deposit is made, then the stay order granted today will stand vacated without further reference to this Court;
- d) The petitioner is directed to file an authenticated copy of this order in the execution proceedings and thereafter, even file an affidavit of compliance before the Executing Court by May 10, 2019.

8. It is made clear that this Court has not adverted to the merits of the matter and, therefore, all contentions of the parties are kept open.

9. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

10. All concerned to act on the basis of an authenticated copy of this order.

***(M.S.SONAK, J.)***