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

**INTERIM APPLICATION NO. 1646 OF 2019
IN
SECOND APPEAL (ST) NO. 27410 OF 2019**

Mahadeo Pandurang Raut ...Applicant
Versus
Prakash Shankar Jagtap & Ors. ...Respondents

Mr. Bhushan Walimbe, i/b. Preeti Walimbe, for the Applicant.

None for Respondent Nos. 1 & 2.

Ms. Priyanka Bhadrashete, i/b. N. N. Bhadrashete, for Respondent No.3.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 21st NOVEMBER 2022**

P.C. :

1. Heard Mr. Walimbe, learned counsel appearing for the Applicant.

2. By order dated 2nd January 2016 passed by the learned District Judge-5, Thane in Civil Miscellaneous Application No.101 of 2013, the application for condonation of delay in filing Appeal challenging the judgment and decree dated 13th

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February 2008 passed by the learned Civil Judge, Junior Division, Vashi in Regular Civil Suit No.312 of 2007 has been rejected. The Applicant challenged that order by filing Writ Petition No.3947 of 2016 and withdrew the same with liberty to file Second Appeal in view of the law laid down by the Supreme Court in *Shyam Sunder Sarma vs. Pannalal Jaiswal & Ors.*¹. Thereafter immediately on 7th October 2019, present application has been filed.

3. Mr. Walimbe states that Applicant was prosecuting the wrong remedy therefore, there is delay.

4. On 11th March 2020, this Court has issued notice to Respondents. Despite service, none appears for Respondent Nos. 1 and 2.

5. Ms. Priya Bhadrashete, learned Advocate appears for Respondent No.3.

6. As delay has occurred as the Applicant was prosecuting a wrong remedy and none has appeared for contesting Respondent Nos. 1 and 2 although served, the contentions raised in the Interim Application have remained uncontroverted.

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7. For the above reasons and reasons set out in the Interim Application, the Interim Application is allowed in terms of prayer clause (a).

8. The Interim Application is disposed of accordingly.

[MADHAV J. JAMDAR, J.]