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

**SECOND APPEAL NO.91 OF 2019
WITH
CIVIL APPLICATION NO.158 OF 2019
IN
SECOND APPEAL NO.91 OF 2019**

Vilas Baban Panchal ...Appellant
Versus
Shankar Ramnathsa Bakale and Ors. ...Respondents

- Mr. Shriram Chaudhari, for the Appellant.
- Ms. Shruti Tulpule, for the Respondents.

**CORAM : VINAY JOSHI, J.
DATE : 26th SEPTEMBER 2023**

P.C.:

1. Heard.
2. This is Second Appeal of Original Defendant No.3 seeking to challenge the order dated 18th September 2017 of rejection of delay condonation application passed in Civil Misc. Application No.880 of 2017. Initially, the Respondents have filed a suit for specific performance which was came to be decreed by the Trial Court vide order dated 21st July 2010. The Defendant No.3 (Applicant/Appellant) though appeared in Trial Court, however, did not file written statement and allowed to proceed the matter. After receipt of notice in execution, he has filed Civil Misc. Application No.186 of 2013 before the Trial

Court for setting aside the decree. Admittedly, the said application is still pending before the Trial Court. In the meantime, the Applicant chooses to file First Appeal assailing the same decree but as there was delay he has moved an application for condonation of delay of 2570 days. The First Appellate Court rejected the delay condonation application vide order dated 18th September 2017 which is the subject matter of Second Appeal.

3. Learned counsel appearing for the Appellant on instructions, seeks for withdrawal of this Appeal with liberty to prosecute the pending Civil Misc. Application No.186 of 2013 before the Trial Court. We find no difficulty in permitting him to prosecute the said proceeding which is already *sub judice* before the Trial Court.

4. In view of that, Appeal stands disposed since withdrawn with liberty as prayed for.

5. Learned Trial Judge shall dispose Civil Misc. Application No.186 of 2013 within six months from the date of receipt of information.

6. Both the parties are requested to co-operate the Trial Court for expeditious disposal.

7. All pending applications stand disposed of accordingly.

[VINAY JOSHI, J.]