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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL ST NO. 12925 OF 2024
WITH
INTERIM APPLICATION NO. 10695 OF 2024
IN
SECOND APPEAL ST NO. 12925 OF 2024**

Shahnaj Abdulshukur Rampure

.....Appellant

Vs.

Rashidabegam Mahamdhuseen Shaikh
Deceased through legal heirs

.....Respondents

Mr. M. S. Mulla for the appellant

CORAM : GAURI GODSE, J.

DATE : 23rd JULY 2024

ORDER:

1. Learned counsel for the appellant submits that specific grounds raised in the application for condonation of delay have not been correctly appreciated by the first Appellate Court. Learned counsel for the appellant submits that there was settlement between the parties,

hence, appellant had not appeared before the Trial Court. He submits that the Trial Court's decree is dated 8th January 2018 and the execution is filed in the year 2021 which supports the case of the appellant regarding the settlement between the parties.

2. Learned counsel thus submits that though the learned Judge recorded that substantial rights of the appellant are involved in the matter, learned Judge erred in ignoring the material averments of the appellants in the application for condonation of delay.

3. Considering the submissions made on behalf of the appellant, second appeal raises following substantial questions of law:

(i) Whether the application for condonation of delay could have been rejected in spite of holding that substantial rights of the appellant are involved in the dispute and liberal approach should have been taken while deciding the application for condonation of delay?

(ii) Whether the first Appellate Court erred in not considering the pleadings of the appellant with regard to settlement between the parties and the date of Trial Court's decree and the execution filed

after period of three years which supports the case of the appellant?

4. Issue notice to respondent no. 2 for final disposal of the second appeal at admission stage on the aforesaid questions of law. Notice returnable on 1st October 2024. Court notice to be served alongwith copy of this order.

5. In addition to Court notice, appellant to serve respondent no. 2 by private notice alongwith copy of this order and file affidavit of service before the next date.

INTERIM APPLICATION NO. 10695 OF 2024:

6. Issue notice to respondent no. 2, returnable on 1st October 2024.

7. In addition to Court notice, applicant to serve respondent no. 2 by private notice and file affidavit of service before the next date.

8. Till next date, there will be ad-interim relief in terms of prayer clause (b).

[GAURI GODSE, J.]