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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 13517 OF 2024
WITH
INTERIM APPLICATION NO. 13518 OF 2024
IN
SECOND APPEAL NO. 28452 OF 2024**

Rajeev Girdharilal Pittie and Others ... Applicants/ Appellants
Vs.
Sky Lounge Estates Private Limited ... Respondent

Mr. Pankaj Sawant, Senior Advocate a/w. Mr. Anshuman R. Asare
and Mr. Sanjay Kokane for the Applicants/Appellants.

CORAM : GAURI GODSE, J.

DATE : 7th OCTOBER 2024

ORDER :

1. Heard learned senior counsel for the applicants. This application is for condonation of delay of 841 days in filing the Second Appeal. The appeal is filed almost after more than two and a half years.
2. Learned counsel for the applicants seeks time to file additional affidavit to explain the delay caused in filing the appeal. Leave granted. Additional affidavit to be filed within two weeks from today.

3. Learned counsel for the applicants insisted for ad-interim protection as possession warrant is issued in the execution proceeding.

4. Since the appeal is filed after more than two and a half years, I called upon learned counsel for the appellants to point out whether the Second Appeal raises any substantial question of law. Learned counsel for the appellants points out that the First Appellate Court has modified trial court's decree and added flat no. 502 for specific performance of the contract in favour of the plaintiff. He submits that in view of clause 3.3. of the suit agreement the trial court's findings for granting decree for specific performance for only three flats is erroneously reversed by the First Appellate Court. He thus submits that interpretation of clause 3.3. of the suit agreement is a question of law which is required to be considered by this court. He thus on instructions submits that the appellants would press the Second Appeal only to the extent of the First Appellate Court's decree regarding the specific performance of the contract for the fourth flat i.e. flat no. 502. He further submits that the applicants are agreeable to secure the decretal amount as per clause 4 of the impugned decree dated 14th March 2022.

5. Learned counsel for the applicants on instructions submits

that the applicants would deposit the amount as per clause(4) of the decree dated 14th March 2022 within six weeks from today. He submits that the applicants would deposit the said amount before the trial court in the execution proceedings. Statement made on behalf of the applicants is accepted as an undertaking to this court.

6. In view of the aforesaid submission regarding the question of law, issue notice to respondent alongwith copy of this order on returnable on 16th December 2024.

7. In addition to court notice, learned Advocate for the applicants shall serve the respondent by private service alongwith copy of this order and file service affidavit before the next date.

8. Subject to compliance of the aforesaid undertaking, if any possession warrant is issued with regard to flat no. 502, the same shall not be executed till the next date in this Second Appeal.

[GAURI GODSE, J.]