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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
INTERIM APPLICATION NO. 7854 OF 2025  
IN  
SECOND APPEAL NO. 868 OF 2017**

Shivpujan Gauriprasad Sharma and ... Applicants/Appellants  
Ors

vs.

Prabhakar Sadashiv Sabale and Anr ... Respondents

Mr. Sanjay P. Shinde a/w. Mr. Prathmesh T. Bhanuwanshe for  
Applicants/Appellants.

Mr. Ajit Kejale a/w. Mr. S.R. Ghanavat for Respondent Nos. 1 and 2.

**CORAM : GAURI GODSE, J.**

**DATED : 6<sup>th</sup> MAY 2025**

**ORDER:**

1. This application is for restoration of the second appeal which was dismissed for not filing private paper book within the conditional time granted vide order dated 13<sup>th</sup> December 2017. The second appeal is already admitted on 13<sup>th</sup> December 2017. Learned counsel for the applicants submits that the reasons for not filing private paper book within time and the steps taken to file this application are explained in the application.

2. Learned counsel for the applicant submits that he has

received all the documents and he shall file private paper book within one week.

3. Learned counsel for the respondent vehemently opposes the application. He submits that after the appeal was admitted and stay was granted, the appellant has deliberately not taken any steps to get the appeal ready for final hearing. He submits that the reasons stated in the application are unbelievable and not acceptable. He submits that the impugned decree is the concurrent decree for specific performance and possession in favour of respondents. He submits that in view of dismissal of the appeal, impugned decree is partly executed and the sale deed is registered in favour of the plaintiffs. He submits that the execution is now pending for issuing possession warrant.

4. Learned counsel for the appellant submits that the reasons for dismissal of the second appeal is only for not filing private paper book. He submits that the second appeal is already admitted and stay is granted to the impugned decree. Hence, the appellant would be entitled to be heard on merits of the second appeal. He submits that the appellant shall pay cost of Rs. 10,000/- to compensate the default on the part of the appellant. He submits that the amount of cost shall be handed over by the appellant to the learned advocate

appearing for the respondents.

5. Since, the second appeal was already admitted and ad-interim relief was granted, the appellant would be entitled to be heard on merits. The appellant cannot be denied his right for non compliance of filing of private paper book.

6. In the facts and circumstances of the case, the delay in filing the application is condoned and the application is allowed in terms of prayer clauses (a) and (b), subject to the learned advocate for the appellant filing private paper book within two months from today.

7. The second appeal and Civil Application No. 1802 of 2017 is restored. By way of interim relief further proceedings of the execution application shall remain stayed. The appellants shall not create any third party interest or part with the possession of the suit property.

8. In the meantime, the respondents shall also not create any third party rights in respect of the suit property during the pendency of the second appeal. Civil Application No. 1802 of 2017 is disposed of in the aforesaid terms.

9. Learned advocate for the appellants shall get the second appeal ready for final hearing.

(GAURI GODSE, J.)