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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1371 OF 2025
IN
SECOND APPEAL NO. 639 OF 2023**

Shankar Tukaram Jagtap ... Applicant

Vs.

Bapurao Sadu Mane ... Respondent

Mr. Aditya S. Raktade a/w. Ms. Aarti Shah for the
Applicant/Appellant.

CORAM : GAURI GODSE, J.

DATE : 6th FEBRUARY 2025

ORDER :

1. This application is for restoration of the second appeal which stood rejected for non-removal of office objections. Learned counsel for the applicant submits that the objections could not be removed within time as the applicant had not received certified copy of the first appeal memo and the trial court's judgment. He submits that the applicant has applied for certified copies and the objections will be removed within four weeks from today.

2. He further submits that when the conditional order was passed respondent was not represented in the second appeal.

3. In the facts and circumstances of the case delay is condoned and the application is allowed in terms of prayer clauses (a) and (b), subject to the learned Advocate for the applicant removing all office objections within six weeks from today.

4. I have heard the learned counsel for the applicant on the merits of the second appeal. The second appeal raises following substantial questions of law :

(i) The appellant had adduced evidence by way of filing affidavit in support of his ground for condonation of delay, however, the respondents failed to cross examine the appellant, hence whether the first appellate court erred in not accepting the genuineness of the grounds raised for condonation of delay, when the appellant had prayed for condonation of delay by explaining the reasons for delay on account of his and his wife's illness, death of his wife and financial difficulties?

(iii) Whether in view of the nature of the grounds for condonation of delay, the reasons recorded by the first appellate court in refusing to condone the delay would amount to a hypertechnical approach by ignoring that refusal to condone delay would prejudicially affect the appellants' right

in respect of the suit property ?

(iii) In view of the facts and circumstances of the case whether the first appellate court should have adopted a liberal approach and allowed the application for condonation of delay ?

5. Issue notice to the respondents for final disposal of the second appeal at admission stage on the aforesaid questions of law.

6. Notice is made returnable on 7th May 2025.

7. In addition to court notice, learned Advocate for the appellants to serve the respondents by private service and file service affidavit before the next date.

[GAURI GODSE, J.]