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SLP(C)No. 5551 OF 2001

ITEM No.29

Court No. 1

SECTION IX
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.5551/2001

(From the judgement and order dated 11/07/2000 in CRA 213/2000
of The HIGH COURT OF BOMBAY AT AURANGABAD)

SHRIMANT JADHAVRAO ANANDRAO PAWAR & ORS. Petitioner (s)

VERSUS

DILIP BALVANTRAO PAWAR & ANR. Respondent (s)
(With Office Report)

Date : 10/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

For Petitioner (s) Mr. Shivaji M. Jadhav, adv.

For Respondent (s) Mr. Ashok Kumar Singh, adv.

UPON hearing counsel the Court made the following
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Leave granted.
The appeal is disposed of in terms of the
signed order. No costs.

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(Kanchan Jain) (Prem Prakash)
AR-cum-PS Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6278 OF 2001@@
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arising out of
SPECIAL LEAVE PETITION (C) NO. 5551 OF 2001@@
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Shrimant Jadhavrao Anandrao PawarAppellants
& Ors.

VS.

Dilip Balvantrao Pawar & Anr.Respondents

O R D E R@@
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Leave granted.

The appellants filed civil suit No. 197/1995 seeking perpetual injunction to restrain respondents from disturbing their possession over the suit property. An ex-parte interim injunction came to be issued which was confirmed by the learned Civil Judge on 22nd August, 1995. The appeal, filed against the order of the trial court dated 22nd August, 1995, was dismissed on 24th April, 1996 by the learned Additional District Judge. The matter rested there.

Respondent No. 1 filed civil suit No. 120/1996 seeking perpetual injunction against the appellant. That suit was decided against the appellant and the suit filed by respondent No. 1 was decreed on 21st November, 1998.

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The appellant, thereafter, challenged judgment and decree dated 21st November, 1998 by filing Regular Civil Appeal in the court of Additional District Judge, Ahmednagar. Alongwith the appeal, appellant filed an application seeking condonation of delay of 14 days in filing the appeal. The application for condonation of delay was opposed and the learned Additional District Judge, Ahmednagar, vide judgment and order dated 15th November, 1999 dismissed the application for condonation of delay and consequently, the appeal was dismissed as barred by time. The appellant filed a civil revision putting in issue the order of the learned Additional District Judge. By the impugned order, the High Court has dismissed the revision petition.

We have perused the order of the learned Additional District Judge dismissing the appeal on the ground of limitation as also the impugned order of the High Court. We are of the opinion that the approach of both the courts in the matter of condonation of delay has been erroneous. The impugned order of the High Court shows that the Court was influenced by the fact that the period from 7.12.1998 to 1.1.1999 had

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not been explained by the appellants. The High Court is on record to say that even if the period from 1.1.1999 to 13.1.1999 is treated to have been properly explained, the first appellate court committed no error in rejecting the appeal on the ground of delay because of the non-explanation of the delay between 7.12.1998 and 1.1.1999. The period between 7.12.1998 to 1.11.1999 fell well within the period of limitation prescribed for filing the appeal. The question of explaining that period did not arise. It is only the period of those 14 days before the filing of the appeal which was required to be explained and proper explanation for that period has been given, which was supported by medical certificate, which in the facts and circumstances of this case, we see no reason to disbelieve. The learned Additional District Judge was, therefore, in error in rejecting the application for condonation of delay for the period 7.12.1998 to 1.1.1999, vide order dated 15th November, 1999 and the High Court also fell in error in dismissing the revision petition.

For what we have noticed above, the orders of the High Court as well as of the Additional District

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Judge cannot be sustained. Both are, hereby, set aside. The matter is remanded to the first appellate court for hearing the appeal on merits. Delay of 14 days in preferring that appeal shall stand condoned.

Parties, through their learned counsel, are directed to appear before the first appellate court on or before 12th October, 2001 for receiving directions with regard to rehearing of the appeal on merits.

The appeal is disposed of. No costs.

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.....J.
(R. C. LAHOTI)

.....J.
(P. VENKATARAMA REDDI)

New Delhi
September 10, 2001.