

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3971 OF 2015

Damodar V. Musudage
(since deceased through heirs) and anr. .. Petitioners
vs.

Shankar Bapu Alias Sakharam
Musudage (since deceased through
heirs) and ors. .. Respondents

Mr. Abhijeet A. Desai a/w. Vrushali L. Maindad for the Petitioners.

CORAM : M. S. SONAK, J.

DATE : 17 April 2015

P.C. :-

- 1] Not on board. Upon production, taken on board.
- 2] The order impugned in this petition is one, by which the District Judge has declined to condone the delay in filing the Appeal against the decree.
- 3] The Hon'ble Apex Court, in case of *Shyam Sundar Sarma Vs. Pannalal Jaiswal and ors - (2005) 1 SCC 436*, has held that an order dismissing the application for condonation of delay in filing an appeal, is also an order made in the appeal itself.
- 4] In view of the aforesaid, it is not possible to entertain the present petition, as the petitioners have the alternate remedy by way of filing further appeal, as provided under the law..
- 5] If however, the petitioners prefer an appeal within a period of four weeks from today, then the period during which the present

petition has been pending in this Court may be considered as period spent *bona fide* in pursuing the remedy against the impugned order.

6] With the aforesaid observations, present petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

dinesh