

CORAM : R. G. KETKAR, J.
DATE : 6TH JULY, 2015

Not on Board. At the request of Mr. Gite, learned Counsel for petitioner, taken up in the production Board.

3. In view the decision of the Apex Court in the case of *Shyam Sundar Sarma Vs. Pannalal Jaiswal*, **AIR 2005 SC 226**, and in paragraph 10 thereof, Petition under Article 227 is not maintainable. The Apex Court has observed in paragraph 10 as under:-

1/2

presentation, after the dismissal of an application for condoning the delay, is in substance and effect a confirmation of the decree appealed against. Thus, the position that emerges on a survey of the authorities is that an appeal filed along with an application for condoning the delay in filing that appeal when dismissed on the refusal to condone the delay is nevertheless a decision in the appeal.”

(emphasis supplied)

4. In view thereof, Writ Petition is not maintainable and the petitioner will have to file substantive Second Appeal challenging the impugned order. Reserving liberty to the petitioner to challenge the impugned order by filing Second Appeal, Petition is disposed of. Registry shall return certified copies, if any, filed by the petitioner.

(R. G. KETKAR, J.)

Minal Parab