

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9527 OF 2014

Taiyabba Ashfaq Ahmed Alias
Taiyabba Jainul Abudin .. Petitioner
vs.
Iqbal Ahemad Jainul Abedin & ors. .. Respondents
Mr. N.R. Bubna for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 1 April, 2015.

P.C. :-

1] This petition challenges the order dated 10 December 2013, by which the Ad-hoc District Judge-2 Malegaon has declined to condone the delay in filing the appeal against the judgment and decree dated 16 September 2005.

2] The Hon'ble Apex Court, in case of *Shyam Sundar Sarma Vs. Pannalal Jaiswal and ors - (2005) 1 SCC 436*, has held that an appeal when dismissed on refusal to condone the delay is nevertheless a decision in the appeal.

3] In view of the same, there is no question of entertaining the present petition. However, the petitioner shall be at liberty to institute an appeal against the impugned order. If such an appeal is

instituted 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.

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

(M. S. SONAK, J.)

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