

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD

WRIT PETITION NO. 7868 OF 2012

Sow. Rekha w/o Rajkumar Ban

Petitioner..

VERSUS

Rajkumar s/o Dhondibawa Ban

Respondent..

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Mr Dayanand B. Bhange, Advocate for the petitioner
Mr Advant, Advocate h/f Mr S. V. Munde, Advocate for respondent

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CORAM : **V. L. ACHLIYA, J.**
DATE : 16TH APRIL, 2016.

PER COURT:

. Heard learned counsel appearing on behalf of the respective parties.

2. By way of this petition, the petitioner has challenged the order dated 03.03.2012 passed in Civil Misc. Application No. 58 of 2007, rejecting the application for condonation of delay in preferring appeal against the judgment and decree in HMP No. 25 of 2005 passed by learned *Ad hoc* District Judge-1, Udgir, Dist. Latur. Being aggrieved by said order dated 03.03.2012, the petitioner has filed the instant writ petition under the misconception that there is no other remedy available to the petitioner other than to file the writ petition.

3. Learned counsel appearing for respondent objected the maintainability of the writ petition on the ground that, the rejection of

application for condonation of delay amounts to rejection of appeal and, therefore, there is a remedy by way of second appeal available to the petitioner. In support of this contention, the learned counsel for the respondent has placed reliance upon the decision of the Hon'ble Apex Court in the case of **Shyam Sundar Sarma Versus Pannalal Jaiswal & Others** reported in 2005(4) Bom.C.R. 839 and the decision of this Court in the case of **Shewantabai wd/o Kashinath Kumbhare (since deceased) Suresh Kashinath Kumbhare and others vs. Purushottam s/o Mahadeorao Ambatkar** reported in [2014(2) Mh.L.J. 848].

4. In view of the law laid down by the Hon'ble Apex Court in the case of Shyam Sundar Sarma (cited supra), the petitioner has an alternate remedy to challenge the order impugned in the petition by way of second appeal. In this view of the matter, the petition is disposed of with liberty to the petitioner to avail of alternate remedy by filing second appeal. No order as to costs.

[V. L. ACHLIYA, J.]