

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5997/2014

Mohd. Usman s/o Mohd. Hanif and others

..Versus..

Mohd. Subhan Mohd. Sujat through L.Rs. and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Anand Deshpande, Advocate for the petitioners.
Shri Sagar Katkar Advocate h/f Shri N.R. Saboo, Advocate for the
respondent Nos.1(a) to 1(e).

CORAM : Z.A. HAQ, J.

DATE : 14.6.2016

The petitioners have challenged the order passed by the trial Court rejecting the application praying for condonation of delay. As the delay is not condoned, the application filed by the petitioners under Order 9 Rule 9 of the Code of Civil Procedure stood rejected.

Shri C.A. Babrekar, Advocate for the respondent Nos.2(a) to 2(e) has raised preliminary objection to the tenability of the petition on the ground that the impugned order is appealable under Order 43 Rule 1(c) of the Code of Civil Procedure. In support of the submission reliance is placed on the judgment given in the case of *Shyam Sunder Sarma V/s. Pannalal Jaiswal and others* reported in **2005(1) Mh.L.J.340**. In view of the objection raised on behalf of the respondent Nos.2(a) to 2(e), the learned Advocate for the

petitioners seeks permission to withdraw the petition with liberty to file the appeal. The petition is **disposed** accordingly.

The learned Advocate for the petitioners prays that the District Court may be directed to consider sympathetically the issue about delay in filing the appeal as it has occasioned because of prosecution of the petition before this Court. It goes without saying that if proper explanation is given, it will have to be considered by the District Court.

JUDGE

Tambaskar.