

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4218 OF 2019

SALIMABEE SY YUSUF AND OTHERS
VERSUS
SABERA BEE SY YUSUF AND OTHERS

...

Advocate for Petitioners : Mr. Nikhilesh Tungar
Advocate for Respondents No. 2 and 3: Mr. Mohanish Thorat

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 7th JUNE, 2022

ORDER :

1. By relying on the decision of Hon'ble Supreme Court in *Shyam Sundar Sarma Vs. Pannalal Jaiswal* (2005) 1 SCC 436, the learned advocate for respondents No. 2 and 3 questioned the maintainability of the present petition. According to him as per the ratio of this judgment second appeal is maintainable and not the writ petition. In the said decision it is held that even if an appeal is filed along with delay condonation application and the delay condonation application is rejected, the same is a decision in appeal.

2. Considering the ratio in the above decision, the learned advocate for the petitioners seeks permission to withdraw the petition with liberty to file second appeal. The writ petition is

therefore disposed of as withdrawn with liberty as prayed for.

3. The petitioners are at liberty to mention the pendency of present petition while seeking condonation of delay in second appeal.

[NITIN B. SURYAWANSHI]
JUDGE