

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

WRIT PETITION NO. 2758 OF 2021

Shankar M. Bhojwani

Vs.

Dilip s/o Assudomal Kriplani and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms. T.H. Khan, AGP for respondent Nos.3 & 4.
Mr. J.S. Duhilani, Advocate for respondent No.1.
Mr. Sumedh Khan, Advocate h/f Mr. Rajnish Vyas,
Advocate for respondent No.5.

CORAM : MANISH PITALE J.

DATE : 08.07.2022.

When this petition is called for hearing, a preliminary objection is taken on behalf of the respondents, stating that as per settled law a second appeal would lie against the order challenged in the present writ petition.

2. It is pointed out that as per judgment of the Hon'ble Supreme Court in the case of *Shaym Sunder Sarma Vs. Pannalal Jaiswaland and Ors. AIR 2005 SCC 226* and judgment of this Court in the case of *Shewantabai wd/o Kashinath Kumbhare and Ors. Vs. Purushottam s/o Mahadeorao Ambatkar, 2014 (2) Mh.L.J 848*, when a first appellate Court

refuses to condone delay in filing appeal it amounts to dismissal of the appeal itself and confirmation of decree of the trial Court, as a consequence of which remedy would be to file a second appeal under Section 100 of the Civil Procedure of Code.

3. In view of the above, it is found that the present writ petition cannot be entertained. Accordingly, it is dismissed with liberty to the petitioner to avail of the said statutory remedy available in law.

JUDGE