

Party Name : SUSMITA SAHA Vs SUDIP KUMAR SAHA

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HONBLE THE CHIEF JUSTICE DEEPAK GUPTA THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard learned counsel for the parties.

There is 168 days delay in filing the appeal. Though we are not wholly satisfied with the explanation given for condonation of delay because we cannot believe that because the petitioner was totally unaware about the fact that the divorce proceeding was separate and the application under Section 128 of the Cr.P.C was separate.

We are still of the view that the petitioner should not be deprived of a right to have an appeal heard on merits only on the ground of the appeal being time barred. We are saying so because the perusal of the record of the Courts below shows that despite many exhortations by the Court the husband did not pay maintenance to the wife. A person who is in arrears of maintenance order by a Court in our opinion is not entitled to raise the technical objection in this matter.

Therefore, the delay is condoned.

C.M. application is disposed of.