

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

CRIMINAL APPLICATION NO. 452 OF 2015

Krishna s/o. Nagnathrao Tehre & Ors. .. Applicants

Versus

Ujwalla w/o. Krishana Tehre .. Respondent

Mr. G.R. Syed, Advocate for the applicants.

Mr. P.K. Ippar h/f. Mr. S.J. Salunke, Advocate for the respondent.

CORAM : SMT.SADHANA S. JADHAV,J.

DATED : 07.05.2015

P.C. :-

1. Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The applicants herein question the correctness and validity of the order passed by the Extra Joint Adhoc Additional Sessions Judge, Parbhani, thereby rejecting the application seeking condonation of delay in filing the appeal challenging the order passed by the J.M.F.C. Parbhani.

3. The facts in nutshell are that the present applicants happens to be respondents in Cri. Misc. Application No.549 of 2010 filed by the respondent before

the Court of J.M.F.C., Court No.5, Parbhani. The respondent herein had filed an application seeking maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005. According to the applicants the said application was decided ex-parte. The respondent was granted maintenance at the rate of Rs.1500/- per month and compensation of Rs.3000/- and equal amount towards house rent. Learned Counsel for the applicants submits that the applicants herein had not received copy of summons in the Misc. Application. The summons was served upon the applicants by affixing the same on the door of the house of the applicants. The house was locked as the applicants were out of station. By the time the applicants returned home, the copy was not affixing to the door and in all probabilities, it had been removed or misplaced. Subsequently, the applicants had learnt that the respondent had filed execution proceedings. The applicants had appeared in the execution proceedings and had on various occasions deposited the total amount of Rs.85000/- and had learnt that the learned Magistrate had decided the Misc. Application ex-parte. The applicants then approached the Court of Sessions to file an appeal under section 29 of the Domestic Violence Act. The applicants had filed a separate application seeking condonation of delay in filing the appeal. The learned Sessions Court has

observed that the applicants had failed to make out a case of sufficient cause for condoning the delay. The delay was of 3 years 2 months and 17 days. The applicants had deposited the amount towards maintenance. Learned Sessions Court has observed that in the application seeking condonation of delay, there is no specific averment in respect of the date and day when the applicants got knowledge about the said proceedings or the decision in the said Misc. Application. It was simply averred that immediately after getting knowledge an application was made for certified copy on 14.03.2014. The date of the judgment is 13.07.2011.

4. It is true that there are lapses on the part of the applicants. No specific case was made out for seeking the relief of condonation of delay, which was a substantial delay. However, the Court cannot be oblivious of the fact that the said case arises out of the matrimonial dispute and that the applicants would be bound by the orders of the Court to pay maintenance to the respondent and no substantial loss would be caused in the eventuality that the applicants would pay the compensation and the amount of maintenance. The Appellate Court would consider entire case by appreciating evidence on record. However, the lapse of not mentioning the details in the application seeking

condonation of delay by the applicants herein cannot be deprived of applicants' statutory right of appeal. Hence, this Court is inclined to quash and set aside the order passed by the learned Sessions Judge dated 18.12.2014, thereby rejecting the application seeking condonation of delay in filing the appeal. However, this Court by order dated 05.05.2015 has directed the applicants to deposit an amount of Rs.30,000/- before the Trial Court i.e. J.M.F.C., Parbhani, within two weeks from 05.05.2015. Learned Counsel for the applicants, upon instructions, submits that the applicants would comply with the order dated 05.05.2015 and would also pay cost of Rs.5000/- along with fresh application seeking condonation of delay, which shall be accompanied by the memorandum of appeal to be presented before the Sessions Court. Learned Sessions Court shall sympathetically consider the application seeking condonation of delay coupled with the fact that the time spent in this Court in prosecuting the criminal application shall be taken in to consideration. Hence, following order is passed :-

ORDER

- (i) The Criminal Application is allowed.
- (ii) The order dated 18.12.2014 passed by Extra Joint Adhoc Additional Sessions Judge, Parbhani in Criminal Misc. Application No. 16 of

2014 is hereby quashed and set aside.

(iii) The applicants herein shall file fresh application seeking condonation of delay along with memorandum of appeal and other necessary annexures within two weeks from today.

(iv) The applicants shall deposit costs of Rs.5000/- while presenting the appeal.

(v) Learned Sessions Judge shall consider the appeal on its own merits without being influenced by the observations of this Court in respect of condonation of delay.

5. The Criminal Application is allowed in above terms. Rule made absolute accordingly.

[SMT. SADHANA S. JADHAV, J.]