

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.111 OF 2015.

Mr. Sanjay Vasant Bhagat,
S/o Vasant Bhagat,
Aged 47 years, married,
Service, R/O H. No.236,
Bhagat Vaddo, Amona,
Sanquelim, Goa.

..... Petitioner

V e r s u s

Mrs. Sampada Sanjay Bhagat,
W/o Sanjay V. Bhagat,
Aged 45 years, married,
Housewife, R/o H. No.236,
Bhagat Vado, Amona,
Sanquelim, Goa.

..... Respondent

Shri M. Harmalkar, Advocate for the Petitioner.

Shri A. Palekar, Advocate for the Respondent.

CORAM: C. V. BHADANG, J.
DATE: 27 th, NOVEMBER, 2015.

Order:

By this petition, the petitioner is challenging the order dated 17/7/2015 passed by the learned Addl. Sessions Judge, Mapusa, in Criminal Miscellaneous Appeal No.43 of 2015. By the impugned order, the application for condonation of delay filed by the respondent for condonation of delay of 278 days in filing the appeal has been allowed.

2. The brief facts are that the respondent is the wife of the petitioner. The parties are having two minor children. The respondent has approached the learned Magistrate under Section 12 of the Domestic Violence Act being Criminal case No.10/DVA/2012/B claiming maintenance against the applicant. It appears that by an order dated 6/12/2012, the learned Magistrate was pleased to grant interim relief to the respondent directing payment of interim maintenance of Rs.3000/- per month from the date of the application until further orders. However, subsequently by judgment and order dated 13/5/2014, the application under section 12 of the Act came to be dismissed.

3. It was contended on behalf of the petitioner before the learned Sessions Judge that the amount of interim maintenance was being deducted by the employer of the applicant i.e. Sesa Goa Company Ltd. directly. It was contended that even after dismissal of the case, Sesa Goa Ltd. continued to deduct the amount and the respondent was receiving the amount of interim maintenance. In such circumstances, the respondent was under a bonafide belief that there was no adverse order passed against her. It was only when the applicant filed an application seeking an order to stop the deduction that the respondent came to know of the impugned order passed. This was when the respondent was served with a notice of the application for direction dated 12/12/2014 to stop the deduction of the maintenance amount. It was

thereafter that the respondent approached the present advocate through advocate Gautam Bhagat, who is from the same village to inquire about the said notice. It was contended that after going through the said notice, Advocate Gautam Bhagat appeared in the matter on 3/2/2015, when the copy of the application for direction to stop the deduction was served on the respondent. It is thereafter that the respondent took steps to challenge the impugned order by which time there was a delay of 278 days.

4. The applicant opposed the application on the ground that there are no sufficient grounds made out for condonation of delay. It was contended that the respondent was present along with her advocate when her application under the Domestic Violence Act was dismissed and she was aware of the same.

5. The Addl. Sessions Judge has found that the quantum of delay is not material and even assuming that there is no Affidavit filed by the advocate, considering the fact that the provisions of the Domestic Violence Act are a beneficial legislation, it was found that, in the interest of justice, the delay deserves to be condoned. Feeling aggrieved, the petitioner is before this Court.

6. I have heard the learned counsel for the parties and perused the record.

7. It appears that even after the dismissal of the application under section 12 of the Domestic Violence Act, the deduction on account of the interim maintenance continued and the applicant was required to file an application before the Magistrate for a direction to his employer to stop the deduction. This fact is clearly borne out from the record. If that be so, it appears to be plausible that the applicant who is stated to be an illiterate lady with two minor children that she was under impression that there was no adverse orders passed which would be required to be challenged. It is trite that ordinarily a party cannot be made to suffer for the lapse of the counsel. In addition to this, the aspect that the Act is a piece of beneficial legislation would also come to the aid of the respondent. In such circumstances, the impugned order would not require interference in exercise of the extraordinary jurisdiction of this Court. In the circumstances, the petition is hereby dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/-