

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

8 CIVIL APPLICATION NO. 5967/2015 IN FCAST/10369/2015

REKHA RAVIKANT GADKARI
VERSUS
RAVIKANT PUNJARAM GADKARI

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Advocate for Applicant : Mr. S. H. Panchal h/for Mr. Garud
V.B.

Advocate for Respondent : Mr. P. B. Waghmare

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 14th October, 2016

ORDER:

1. This is an application seeking condonation of delay in filing an appeal against the judgment and order passed by the Family Court thereby allowing the application of the present respondent seeking restitution of conjugal rights. The learned counsel for the applicant states that the applicant could not prefer appeal within time as the applicant was suffering from illness and taking treatment. Even after passing the decree for conjugal rights, the present applicant went for cohabitation on 05.08.2013 along-with child but was ill-treated and on 09.08.2013 was driven by the present non-applicant. According to the learned counsel, the applicant is constrained to reside at her parents house. The papers showing the

treatment being taken by the present applicant are placed on record.

2. Mr. Waghmaere, learned counsel for the non-applicant opposes the application for condonation of delay and submits that false averments are made by the applicant in the application for condonation of delay. The applicant was prosecuting the other proceedings and the ground of illness is only created for filing the application for condonation of delay. The applicant could have filed appeal within the stipulated period. No sufficient cause is stated in that regard. The present non-applicant has filed the petition for divorce and as a counter-blast, the present appeal along-with application for condonation delay is filed by the applicant. The same is without any basis.

3. We have considered the submissions. The present proceeding arises out of the matrimonial dispute. The relationship between the parties is not disputed. In other proceedings, even the mediation has failed. The averment of the applicant is that after the decree for restitution was passed, the applicant along-with child had gone to the house of the non-applicant to cohabit but after 4/5 days, have been driven out. The said

averments certainly are denied by the non-applicant. We need not go into the merits of the said averments as, if the appeal is heard on merits, the respective arguments can be considered in appeal.

4. The applicant has filed on record the medical papers showing the treatment being taken by the applicant. It is trite that whenever technical consideration and cause for substantial justice are pitted against each other, the cause for substantial justice has to be sub-served.

5. Considering the nature of the dispute, the relations between the parties, the grounds mentioned for condonation of delay and upon going through the medical papers produced on record, we are inclined to condone the delay. In view of that the civil application seeking condonation of delay is allowed.

6. Civil application disposed of.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC