

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11047 OF 2015

Gulab s/o Ganpatrao Daund,
Age: 37 years, Occ: Agri.
R/o. Satala, Tq. & Dist. Parbhani.

... Petitioner

Vs.

Sow. Anusaya w/o Gulab Daund,
Age: 33 years, Occ: Household,
R/o. C/o. At present Vishnu Palode,
Zola, Tq. Gangakhed,
Dist. Parbhani.

... Respondent

Mr. A.J. Mete, Advocate, h/f. Shrikant Veer, Advocate for the
petitioner.
Mr. P.S. Paranjpe, Advocate for the respondent.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 03-08-2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally
with consent of the parties.

2. The petitioner is before this court purportedly aggrieved
by an order dated 27-04-2015 passed by Principal District Judge,
Parbhani thereby allowing Misc. Civil Appeal No. 15 of 2014 filed by
present respondent and setting aside order dated 17-01-2014
passed by Jt. C.J.S.D. Parbhani in Civil Misc. Application No. 265 of

2012, whereby application for condonation of delay in filing appeal against *ex parte* decree of divorce had been rejected.

3. Learned counsel Mr. Mete vehemently contends that, despite wide disparity appearing in the reasons which were put forth for condonation of delay and the material produced on record, the appellate court has purportedly condoned the delay. He submits that, it is the contention of the respondent that she had been not keeping well and as such had been prevented from attending the court, however, there are no particulars given about the illness she had been suffering and indulged into making only general statements. It is submitted that, it transpires that respondent had stated she had been suffering from typhoid whereas the evidence of doctor shows that she has been suffering partial hyper tension, with such variance, no credence could have been given to the contents of the application and the delay ought not to have been condoned. The learned appellate judge has committed a grave error in allowing the application for condonation of delay.

4. Mr. Paranjpe appearing for the respondents, submits that, the delay is of about 4 months and 19 days and respondent had not been keeping well and a medical certificate to that effect is produced on record. Not only this there has been evidence given about her being not well. May be there is little variance in the

statement taken from the respondent by the petitioner in the cross-examination and the evidence by the doctor, however, looking at the educational level and stature of the person, it may not be attached so much of importance which would entail dismissal of the application for condonation of delay, wherein, the courts have normally been liberal and here the delay is not as much which can be said to be inordinate. The statement may be outcome up confusion or belief or unawareness of reason for being indisposed. It, however, should be considered that the respondent was not keeping well and the same is evinced from evidence, albeit reasons may ostensibly differ. Yet, the fact remains that respondent was not keeping well.

5. He further submits that, the discrepancies occurring in the statements and evidence is venial in nature, as such, it should not be given undue importance to an extent to be subversive to the cause of justice. He further submits that, appellate court has taken a proper view in the matter as would be required by facts and circumstances and has also relied on a Supreme Court judgment in which it has been referred to that court should adopt liberal approach and meritorious matters may not be thrown out at threshold on account of rejection of request for delay condonation.

6. Having regard to aforesaid submissions and particularly

having regard to that, the appellate court appears to have appreciated the matter from an angle which would sub-serve the cause of justice and would not throw away the contest on merits. At the threshold, it appears that, from the reasons as are occurring in paragraphs no. 6 and 7 of the impugned judgment and order, relevant considerations have been taken into account and relevant reasons have also weighed with the appellate court. The appellate court had, as such, passed the orders which cannot be termed to be illegal or otherwise patently untenable, and delay cannot be termed to be an inordinate. I am not inclined to indulge into the request being made under writ petition. The writ petition as such is being dismissed. Rule discharged.

7. However, the inconvenience caused in the process to the petitioner shall be made good by making the respondent to pay an amount of Rs.1000/-. The amount be deposited with the trial court for its onward disbursal to the petitioner. The amount be deposited in the court within a period of six weeks from the date of receipt of writ of this order.

(SUNIL P. DESHMUKH)
JUDGE

mub