

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

CRIMINAL WRIT PETITION NO. 1300 OF 2016

Rafique s/o. Babu Pansare & Ors. .. Petitioners

Versus

Banobee s/o. Shaik Ekbal .. Respondent

Ms. Sharada P. Chate, Advocate for the petitioners.

Ms. A. N. Ansari, Advocate for sole respondent.

CORAM : Z.A. HAQ, J.

DATED : 17.11.2016

P.C. :-

1. Heard Ms. Sharada P. Chate, learned Advocate for the petitioners and Ms. A. N. Ansari, learned Advocate for the respondent. The appeal filed by the petitioners along with two others under section 29 of the Protection of Women from Domestic Violence Act, 2005, was dismissed in default. The appellants before the Sessions Court filed an application seeking restoration of appeal and as there was delay of about 51 days in filing the restoration application, an application praying for condonation of delay was filed. The learned Sessions Judge by order dated 03.05.2016, condoned the delay subject to payment of Rs.500/-, which amount was to be deposited within 15 days from the date of the order. The amount was not deposited within the stipulated time and

an application was filed seeking permission to deposit the amount of Rs.500/-. This application is rejected by the impugned order, on the ground that the application is filed after more than three months.

2. In the proceedings before the learned Magistrate, the contention of the present respondent was that present petitioners and other two persons (appellants before the Court) had illegally dispossessed the present respondent, her husband and their children.

3. Be that as it may, as the appeal before the Sessions Court was admitted and pending for final hearing, considering the facts of the case, in my view interests of justice would be sub-served by passing the following order :-

i. The impugned order is set aside.

ii. The petitioners are permitted to deposit the amount of Rs.500/- (Rupees Five Hundred) before the Sessions Court. The amount shall be deposited within one month from the date of this order.

iii. In addition, the petitioners shall pay costs of Rs.5000/- (Rupees Five Thousand) to the present respondent. This amount shall also be paid by the petitioners to the respondent within one month from the date of this order.

iv. If the petitioners fail to comply with any part of the order and fail to deposit the amount within the stipulated time, the impugned order shall stand restored.

v. If the amount is deposited within the stipulated time, the learned Sessions Judge shall proceed further according to law.

4. The writ petition is disposed of in above terms.

[Z.A. HAQ, J.]