

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

**Civil Application No.3154 of 2014  
In  
Second Appeal Stamp No. 35477 of 2013  
With  
Civil Application No.3155 of 2014**

Manisha @ Latika Anil Talekar. .. **Applicant.**

**Versus**

Anil s/o Kisan Talekar. .. **Respondent.**

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Shri. Yogesh R. Shinde, Advocate, holding for Shri. Rahul R. Karpe, Advocate, for applicant.

Smt. Madhaveshwari D. Thube-Mhase, Advocate, for respondent.

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**CORAM: T.V. NALAWADE, J.**

**DATE : 10<sup>th</sup> AUGUST 2016**

**ORDER:**

1) The application is filed for condonation of delay of 1081 days caused in filing second appeal. Heard learned counsel for both the sides.

2) Learned counsel for the respondent-husband submitted that delay is huge and there is some vested

right of husband and due to that some events took place, and delay condonation will affect the interest of the third party. On the other hand, learned counsel for the appellant submitted that the appellant is a lady, she is not having resources and due to that she was not present in the trial Court and the matter was decided in her absence and these circumstances are not considered by the first appellate Court. He argued to show that there is arguable case in the second appeal. Due to the facts and circumstances of the case, this Court holds that there is sufficient cause. The application is allowed. Delay is condoned.

3) Heard learned counsel for the appellant. Seen the judgments delivered by the Courts below. Copy of petition is made available. In the petition at para 7 the husband had specifically contended that wife left his company 8 days prior to the Diwali festival of 2004. Thus according the husband, the desertion period started at the most in the month of October 2004. The petition came to be filed on 6-6-2006. Learned counsel for the wife, appellant drew attention of this Court to the provision of

section 13(1)(i-b) of the Hindu Marriage Act, 1955. In this provision it is made clear that the petition can be entertained only after completion of two years period of the desertion. Wording used is "presentation of the petition". Learned counsel submitted that the petition itself ought not to have been entertained in view of this provision. Learned counsel submitted that though the trial Court had framed such issue, this provision was not considered by the trial Court and so substantial question of law is involved in the matter. In view of the submissions and as there is force in the submissions made for the wife, the appeal is admitted on the following substantial questions of law :-

- (i) *Whether the Courts below have committed error in entertaining the petition when there was specific pleading that the desertion had taken place 8 days prior to the Diwali festival of 2004 and the period of 2 years as contemplated in section 13(1)(i-b) of the Act was not completed for presentation of the petition.*
- (ii) *Whether the Courts below have committed error in giving decree of divorce when petition itself could not have been entertained ?*

4) Notice after admission. It is waived by the learned counsel.

5) Since the things have possibly changed, since the date of the decision of the trial Court only order of status quo is made. In those terms Civil Application No.3155/2014 is allowed and disposed of.

Sd/-  
**(T.V. NALAWADE, J. )**

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