

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.55 of 2013
IN
FAMILY COURT APPEAL STAMP NO.1414 OF 2013

Sau. Varsha Suresh Patil. .. Applicant
Vs
Shree Suresh Bhaskar Patil. .. Respondent
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Shri Pravartak S. Pathak for the Applicant.
Shri Chetan S. Damre for the Respondent.
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CORAM : A.S. OKA & PD. NAIK, JJ
DATED : 21ST APRIL 2016

P.C.

1. Heard learned counsel appearing for the Applicant. This is an Application for condonation of delay of 125 days in preferring an Appeal against the decree of divorce passed by the Family Court at Nashik on a Petition for divorce filed by the Respondent husband.

2. The impugned decree of divorce was passed on 21st March 2012. As held by this Court in the judgment and order dated 25th April 2007 in Civil Application No.88 of 2007 in Family Court Appeal Stamp No.8906 of 2007, the period of limitation for filing a Family Court Appeal is 90 days. In the present case, an Application for grant of certified copy of the judgment and decree was made on 12th June 2012 and the certified copy of the said judgment and decree was ready and handed over to the Applicant on 31st August 2012.

3. The Appeal has been preferred on 4th January 2013 and thus, there is a delay of 125 days in preferring the Appeal. There are two grounds set out in support of this Application made by the Applicant wife. The first ground is that due to financial constraints, the Applicant could not take immediate steps to file the Appeal and infact, none of the family members were willing to support her. The second ground for delay is that she was bedridden in November and December 2012. Reliance is placed on the medical certificate dated 24th December 2012 issued by the Orthopedic Surgeon.

4. The Application is opposed by the Respondent husband by filing an affidavit-in-reply. It is pointed out that on 5th November 2012, the Respondent has remarried. Reliance is placed on a photocopy of the marriage certificate annexed at Exhibit-A to the reply.

5. The objection of the learned counsel appearing for the Respondent is that there is hardly any explanation for such long delay. He relied upon a decision of the Apex Court in the case of ***Dr. Lokeshwar v. Dr. Srinivasa Rao***¹.

6. The law is well settled. While dealing with an Application under Section 5 of the Limitation Act, 1963, the Court has to adopt a

1 AIR 2000 Andhra Pradesh 451

liberal and justice oriented approach. We have perused the impugned judgment and decree. The decree of divorce has been passed on the ground of mental cruelty. The allegation against the Applicant made by the Respondent was that she was having illicit relations with one person. We find from the impugned judgment and decree that the said allegation has been accepted by the learned Judge of the Family Court only on the basis of the statements recorded by the police during investigation. In fact, the statements allegedly made by the Applicant in her police statement are relied upon by the learned Judge of the Family Court as the admissions of the Applicant. We have a serious doubt whether by invoking Section 14 of the Family Court Act, 1984, the Family Court could have relied upon the statements recorded by the police during investigation. Considering the nature of the findings based on the police statements and considering the fact that a very serious finding affecting the character of the Applicant has been recorded, a case is made out for condonation of delay. The decision of the Andhra Pradesh High Court is in the facts of the case before it.

7. Hence, sufficient cause is made out for condonation of delay in preferring the Family Court Appeal. The Rule is made absolute in terms of prayer clause (a).

(P.D. NAIK, J)

(A.S. OKA, J)