

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION (ST.) NO. 421 OF 2015

Mohammed Shaikh Lal Patel	.. Applicant
vs.	
Nargis M. Patel & Ors.	.. Respondents

Mr. P. S. Patil i/b. Mr. Milind Rawal for Applicant.
Mr. J. J. Bardeskar for Respondent No. 1.
Ms A. S. Pai – APP for State.

CORAM : M. S. SONAK, J.
DATE : 19 AUGUST 2016

P.C :

1] Rule. Rule is made returnable forthwith with the consent of and at the request of learned counsel for the parties.

2] The challenge in this revision is to the order dated 22 April 2015 made by the Family Court, Kolhapur, declining to condone delay in instituting application for setting aside the exparte order dated 7 January 2014, in terms of which, the applicant has been directed to pay interim maintenance of Rs.10,000/- per month to his wife and Rs.4,000/- to minor daughter.

3] Mr. Patil, learned counsel for the applicant has submitted that the applicant had not received proper notice of the proceedings and therefore, could not attend the proceedings. Mr. Patil has further

submitted that the applicant, on account of frustration due to marital discord was availing medical treatment from psychiatrist. Further, Mr. Patil submitted that the applicant is a daily wager and all these circumstances attributed to his not attending the proceedings as well as the delay in institution of application seeking recall of exparte order dated 7 January 2014. Mr. Patil also made a statement that the applicant has paid maintenance to the respondent - wife in terms of the exparte order dated 7 January 2014 and in case, there is any shortfall, the same will be positively cleared by 7 September 2016.

4] Mr. Bardeskar, learned counsel for respondent no.1 has submitted that there was no sufficient cause demonstrated by the applicant. In fact, the applicant offered to show cause for the delay which according to the applicant was of hardly 66 days when in fact, the delay in the present case was of over five months. Mr. Bardeskar also submitted that maintenance in terms of the order dated 7 January 2014 has not been entirely or regularly paid. For all these reasons, Mr. Bardeskar submitted that the present revision may be dismissed.

5] Upon due consideration of the rival submissions and perusal of record, in my judgment, the applicant is entitled to relief subject to

compliance with certain conditions. The applicant, in computing the period of delay has taken the starting point as the date on which the applicant got effective knowledge of the order dated 7 January 2014. The applicant has stated that he acquired knowledge of the exparte order dated 7 January 2014 only in July 2014. In such circumstances, although, Mr. Bardeskar may be right in his submission that the delay is of over five months, it cannot be said that no sufficient cause has been shown. The circumstance that knowledge of the order dated 7 January 2014 was acquired by the applicant only in July 2014 itself constitutes sufficient cause, in the facts and circumstances of the present case.

6] That apart, the reason that the applicant was availing medical treatment or that there was some deficiency in the matter of services are not entirely irrelevant or extraneous reasons when considering the motion for condonation of delay. For all these reasons, the delay is liable to be condoned.

7] The circumstance that the applicant has paid maintenance or has undertaken to clear the arrears towards maintenance as directed in the exparte order dated 7 January 2014 is also a relevant circumstance when evaluating the *bona fides* of the cause shown. In this case, it cannot be said that the applicant has stated

any mala fide reason or that he has derived any undue benefit on account of his own delay in seeking an order of recall.

8] At the same time, if the contention of Mr. Bardeskar that the applicant has not cleared the arrears towards maintenance upto date or has defaulted in the payment of maintenance as per the ex parte order dated 7 January 2014 is correct, then, the applicant may perhaps, not be entitled to any discretionary relief from this court.

9] Therefore, upon cumulative consideration of the aforesaid circumstances, the applicant is directed to clear the arrears towards maintenance as directed by the ex parte order dated 7 January 2014, if, such amounts are not already cleared, latest by 17 September 2016. If such arrears are cleared by the said date, then, the impugned order dated 22 April 2015, will stand set aside. If the arrears are not cleared by the said date, then the present criminal revision application shall be deemed to have been dismissed without any further notice to this court.

10] Further, considering the circumstance that the reasons given for condonation of delay and the reasons given for recall of the ex parte order dated 7 January 2014 are substantially the same, the

exparte order dated 7 January 2014 shall also stand set aside, in case, the applicant clears the entire arrears upto date latest by 17 September 2016.

11] However, notwithstanding setting aside of exparte order dated 7 January 2014, it is directed that the applicant shall pay by way of interim maintenance, an amount of Rs.14,000/- i.e. Rs.10,000/- to the wife and Rs.4,000/- to the minor daughter regularly until the proceedings seeking maintenance under section 125 of Cr.P.C. are finally disposed of by the family court.

12] The family court is directed to dispose of such application after afford of opportunity to both the parties as expeditiously as possible and in any case within a period of six months from the date of filing of authenticated copy of this order before it.

13] The family court in disposing of the main application need not be influenced by any observations in the exparte order dated 7 January 2014 or for that matter, the present order.

14] In case, the respondent wife desires to lead fresh evidence in the matter, liberty is granted to the respondent-wife to do so. Similarly, the applicant will also have liberty to lead evidence in the

matter if he so desires.

15] Both the parties to cooperate in the matter of expeditious disposal of the maintenance proceedings.

16] The applicant is directed to pay interim maintenance regularly until disposal of the application for maintenance.

17] The parties to appear before the family court on 26 September 2016 and to file authenticated copy of this order along with evidence with regard to clearance of arrears towards maintenance.

18] Rule is accordingly made absolute to the aforesaid extent. There shall, in the facts and circumstances of the present case, be no order as to costs.

19] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)