

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 363 OF 2015
IN
FAMILY COURT APPEAL ST.NO.28413 OF 2015

Smt. Twinkle Sandeep Shah. .. Applicant

In the matter between

Smt. Twinkle Sandeep Shah. .. Appellant

Vs

Shri Sandeep Ramesh Shah. .. Respondent

—

Shri Javed Trivedi for the Applicant/Appellant.

Ms. Neeta Solanki i/b Kisan Jain & Co for the Respondent.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 8TH DECEMBER 2016

PC.

1. Heard learned counsel appearing for the Applicant wife and the learned counsel appearing for the Respondent husband. This Application is for condonation of delay in preferring an Appeal against the decree passed by the learned Judge of the Family Court on a Petition filed by the Respondent husband. By the impugned decree, the marriage solemnized between the Applicant and the Respondent has been ordered to be dissolved by a decree of divorce on the ground of cruelty.

2. The objection of the learned counsel appearing for the Respondent husband is that the delay is not of 109 or 112 days as claimed by the Applicant, but the delay is more than seven months. She pointed out that even according to the case made out by the Applicant wife, the certified copy of the judgment and decree dated 12th December 2014 which was applied for on 23rd January 2015 was made available on 5th May 2015. Her contention is that the Appeal has been belatedly preferred in November 2015 for which there was no explanation.

3. We have considered the submissions. From the record, it appears that the Appeal was filed on 9th October 2015. As stated earlier, the Application for grant of certified copy of the impugned decree dated 12th December 2014 was made on 21st January 2015 and the certified copy was ready on 5th May 2015 as seen from the certified copy produced alongwith the Appeal.

4. Moreover, as held by a recent decision of the Full Bench of this Court in the case of *Shri Shivram Dodanna Shetty v. Sou.Sharmila Shivram Shetty*¹, though this is a Family Court Appeal, as the Appeal arises from the proceedings under the provisions of the Hindu Marriage Act, 1955, the period of limitation of 90 days will be available for preferring an Appeal.

1 Family Court Appeal No.161 of 2013 - Decided on 1st December 2016

5. Moreover, from Paragraph Nos.3 onwards upto Paragraph 10 of the Application, the Applicant has set out the reasons as to why Appeal could not be filed till October 2015.

6. The Applicant wife has suffered a decree of divorce on the ground of cruelty.

7. In view of the averments made in the Application and considering the fact that a liberal and justice oriented approach will have to be adopted, a case is made out for condonation of delay. Rule is made absolute in terms of prayer clause (a).

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)