

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 52 OF 2013

IN

Review Petn. in FCA (ST) NO. 33492 OF 2012

with

Review Petn. in FCA (ST) NO. 33492 OF 2012

SAKIRUNISSA MOHD. AZAD SHAIKH ...Applicant

Versus

MOHAMMED AZAD SHAIKH ...Respondent (Orig.Appellant)

Mr.GLENN A. LOBO, for the Applicant.

**CORAM : A.S.OKA &
G.S.KULKARNI, JJ.**

DATED : 16th MARCH,2016.

P.C.:-

1. The cause title of this application is incorrect. In fact this application is filed by the Respondent-Wife in the Family Court Appeal (St.)No.6482 of 2009. This is an application for condonation of delay in filing the application for Review of the Judgment and Order dated 13th July,2009 by which the Family Court Appeal was disposed of. The Respondent-Husband filed the Family Court Appeal for challenging the decree passed by the Family Court on the Petition filed by the Applicant-wife. The operative part of the said decree reads thus:-

“ ORDER

The petition is hereby decreed with costs.

The marriage between petitioner Sakirunisa Shaikh and respondent Mohammed Shaikh solemnized on 2-6-1997 is hereby dissolved by decree of divorce.

The respondent is directed to return the ornaments and articles as mentioned in the list Exh.25 to the petitioner within one month from today.

The list Exh.25 shall form part and parcel of the decree.

Decree be drawn up accordingly.”

The Paragraphs 3 and 4 of the order dated 13th July,2009 of this Court read thus:-

“3. Before the appeal was filed, the respondent has re-married on 19/1/2009 and the appellant has given up his challenge to the decree of divorce by dissolution of the marriage. A copy of the list at Exh.25 is placed before us and Mr. Thatte, the learned counsel for the respondent, on instructions, stated that though the list is in two parts i.e. articles and ornaments, the articles given in the marriage ought to be returned and the respondent will not press for the return of ornaments mentioned in the second part of the list at Exh. 25. Mr. Prasad states that the articles given in the marriage are lying in the house at Harsinghpur and the respondent's father or brother could collect all those articles as listed in the first part of Exh.25. Mr. Thatte, on instructions, states that the father will visit Harsinghpur and collect all these articles. Mr. Prasad has stated before us that those articles shall be returned to the respondent's father as and

when he visits appellant's house at Harsinghpur. We have also noted down the undertakings of Mr. Prasad that the amount of arrears in respect of the interim maintenance, if any, shall be cleared and paid to the respondent or her father within a period of four weeks from today. On such payment of arrears, the respondent and her father undertake to withdraw the pending complaint filed under Section 498-A of IPC with the Metropolitan Magistrate's court at Andheri. The said undertaking applies to any other cases filed in Mumbai.

4. With these clarifications and undertakings, the appellant does not press for the appeal on any other grounds and, therefore, the appeal stands disposed off accordingly."

2. The contention of the learned Counsel for the Applicant is that the Applicant-wife was not aware of the aforesaid statements made by her Advocate which are recorded in the judgment and order in the Family Court Appeal. In substance, the contention of the learned counsel for the Applicant is that the statements were made by the Advocate for the Applicant without instructions from the Applicant.

3. We have already reproduced paragraphs 3 and 4 of the order passed on 13th July, 2009 in the Family Court Appeal. A specific statement of the learned Counsel representing the Applicant – Wife is recorded on instructions that the Applicant-Wife will not press the claim of return of articles which were given in the marriage and will not press for return of ornaments mentioned in the second part of the list at

Exhibit 25. The order also records an undertaking by the Respondent-husband that the amount of arrears in respect of the interim maintenance, if any, shall be cleared and paid to the applicant-wife or her father within a period of four weeks from the said date. Paragraph (3) further records that on payment of arrears, the Applicant-wife was to withdraw the pending complaint in the Court of the Metropolitan Magistrate at Andheri. In view of what has been recorded in paragraph (3), the learned Advocate appearing for the Respondent-husband did not press the appeal as recorded in paragraph (4).

4. If the statements/undertakings of the Respondent-Husband are not being implemented, the Applicant has a remedy. It is always easy for a litigant to come before the Court and make an allegation that his/her Advocate made statements before the Court without his/her instructions. There is no reason to disbelieve that the statements recorded in paragraph (3) of the Advocate for the Applicant were the statements made on instructions of the Applicant. We find that there is no error apparent on the face of record and even otherwise, there is no ground for review. Hence, the application for condonation of delay as well as the Review Petition stand rejected.

5. If according to the Applicant-wife, the Respondent-husband

has not complied with the assurances and undertakings in the Judgment and Order dated 13th July,2009, it will be open for the Wife to file appropriate proceedings in accordance with law.

(G.S.KULKARNI, J.)

(A.S.OKA, J.)