

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4128 OF 2016

Mrs. Anita Ravikumar Kavanna

Petitioner

Versus

Ravikumar Niranjandeo Kavanna

Respondent

Mr. B.S. Deshmukh advocate for the petitioner

Mr. S.H. Jagiasi advocate for Respondent

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 27th June, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the order dated 7.1.2016 passed by the Appellate Court, by which the delay of about 90 days caused in filing an appeal for challenging the exparte divorce decree dated 17.4.2015 has been allowed.

2 Shri B.S. Deshmukh learned counsel appearing for the petitioner strenuously submits that, though the delay may appear to be minor, the reasons cited for failure to appear in the divorce proceedings i.e. Hindu Marriage Petition No.492/2014 and the delay caused in filing the appeal, cannot be entertained liberally.

3 He submits that the petitioner's wife has been granted divorce exparte by the Judgment dated 17.4.2015. The respondent husband did not participate in the divorce proceedings. Even for filing an appeal, the delay is about 90 days. The reason cited for condonation is not sufficient to grant the application. The appellate Court has considered the factors beyond the application, while passing the impugned order.

4 Section 28, subsection 4 of the Hindu Marriage Act, 1985 provides for preferring an appeal against the decree passed by the Court within a period of 90 days. The appeal and the application for condonation of delay have been filed on 21.9.2015. The delay, therefore, is about 67 days, after excluding the limitation period of 90 days. Notwithstanding the strenuous submissions of Shri B.S. Deshmukh, it cannot be ignored that on the one hand, the respondent has suffered an exparte divorce decree and on the other hand, all his legal remedies would be lost, if he is precluded from filing the appeal on the ground of delay.

5 The Honourable Apex Court in the matter of **Collector, Land Acquisition, Anantnag versus Mst. Katiji & others** (AIR 1987 SC 1353) has observed in paragraph No.3 as under:-

" The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaning- ful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of*

an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides. Appeal is allowed accordingly. No costs. "

6 In my view, the delay caused is neither inordinate, nor deliberate. Laches have not been attributed to the conduct of the respondent. Issue as to whether both the litigating parties had appeared before Sindhi Community Panchayat and had entered

into a compromise, will have to be considered and whether the respondent did not participate in the Hindu Marriage Petition before the trial Court relying upon the said compromise also needs to be scrutinized.

7 Nevertheless, while allowing the application, considering that the petitioner is the wife, the appellate Court could have imposed costs and could have reduced her hardships.

8 In the light of above, this petition is partly allowed. Though the impugned order dated 7.1.2016 condoning the delay is not being interfered with, the respondent is being saddled with costs for condonation of delay for an amount of Rs.3,000/- which he shall deposit with the Appeal Court within a period of four weeks from today. The petitioner would be at liberty to withdraw the said costs without conditions.

(RAVINDRA V. GHUGE , J)