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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 156 OF 2017
WITH
CIVIL APPLICATION NO.157 OF 2017
IN/WITH
SECOND APPEAL (ST.) NO. 37685 OF 2016**

Manilal Ukha Patel,
Age: 62 years, Occ: Retired,
R/o. Taloda, Taluka Taloda,
District Nandurbar ..APPLICANT/APPELLANT

VERSUS

1. Mangalbai Manilal Patel,
Age: 43 years,
Occ: Labour Work,
2. Rajeshwari Manilal Patel,
Age: 19 years, Occ:Nil,

Both R/o. Kumbhar Lane,
Taloda, Taluka Taloda,
District Nandurbar ..RESPONDENTS

Mr Amit Savale, Advocate for applicant/appellant

CORAM : N.W. SAMBRE, J.

DATE : 29th JUNE, 2017

ORAL ORDER :

The respondents though served, none
appears.

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2. Considered the cause cited in the application for condonation of delay.

3. As the contents of the application for delay condonation caused in preferring second appeal are not controverted, delay stands condoned.

4. The appellant is original defendant in Special Civil Suit No. 8 of 2009, which came to be decreed on 9th March, 2010 by judgment and order passed by Civil Judge, Senior Division, Shahada, wherein present appellant was directed to pay certain arrears of maintenance for the period of three years prior to the date of filing of the suit and further maintenance of Rs.1200/- per month to each of the plaintiffs-respondents herein from the date of suit.

5. The said judgment was subject matter of challenge being Regular Civil Appeal No. 8 of 2010. The said appeal came to be partly allowed and order of arrears of maintenance for a period of three years from the date of filing of the suit was upset, whereas the appellant herein is directed to

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pay maintenance @ Rs.1200/- per month to each of the plaintiffs from the date of filing of the suit. As such, this second appeal.

6. Learned Counsel for the appellant would urge that the Courts below have failed to understand the very gamete of the provisions of Section 18 of the Hindu Adoption and Maintenance Act (for short, 'the Act'). According to him, there is hardly any material on record to infer that the appellant has deserted the respondent-plaintiff or there was any act on the part of appellant to neglect the plaintiffs. So as to substantiate his contention, he would invite attention of this Court to two factual matrix; (a) that in the prosecution for an offence punishable under Section 498-A of the Indian Penal Code, present appellant was acquitted and (b) in the proceedings under Section 125 of the Code of Criminal Procedure for grant of maintenance, no maintenance was granted in favour of plaintiff No.1.

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7. Considered the above referred submissions. Both the plaintiffs were examined independently and the defendant has also entered into witness box to prove their case.

8. It is not in dispute that the present appellant-original defendant filed proceedings under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and unconditionally withdrawn the same, which speaks voluminous about his contention that he does not want the company of the respondents-plaintiffs.

9. Apart from above, both the Courts below have considered the very object of Section 18 of the Act and considered that present appellant-husband has not maintained the respondents-plaintiffs for all these days. The issue about non payment of maintenance to the plaintiff-wife in the proceedings under Section 125 of the Code of Criminal Procedure, acquittal of the present appellant for offence punishable under Section 498-A of the Indian Penal Code was also

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considered.

10. Perusal of the judgment of the lower appellate Court demonstrate that the lower appellate Court was concerned about rights of the parties under Section 18 of the Act. While dealing with the claim of award of maintenance and after considering requirements thereunder, lower appellate Court has proceeded to confirm the decree with only modification qua for the period for which maintenance should be paid.

11. Both the Courts below have recorded concurrent findings. I hardly see any substance in the present appeal. The second appeal, in my opinion, lacks merit, stands dismissed.

12. Consequently, pending civil application stands dismissed.

(N.W. SAMBRE, J.)