

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 97 OF 2016
IN
FAMILY COURT APPEAL ST. NO. 9126 OF 2016
WITH
FAMILY COURT APPEAL ST. NO. 9126 OF 2016**

Supdu Soma Bhirud.	..Applicant.
Vs.	
Alka w/o. Supdu Bhirud.	..Respondent.

Shri Sudhir I. Nandode, for the Applicant.

Shri Saurabh V. Patil, for the Respondent.

**CORAM : R. M. SAVANT &
SMT.SADHANA S. JADHAV, JJ
DATE : 12th JULY, 2017**

P.C.

1 The above Civil Application has been filed seeking condonation of delay of 624 days in filing the above Family Court Appeal. The above Family Court Appeal is proposed to be filed against the Judgment and Decree dated 18/3/2014 passed by the Family Court at Nashik in Petition J(A) No. 318/2010. The said Decree is a decree of divorce passed in favour of the Respondent-wife herein.

2 The Applicant had initially challenged the said Decree dated 18th

March, 2014 before the Aurangabad Bench of this Court. The said Family Court Appeal was filed on 12/9/2014 alongwith the Application for condonation of delay.

3 The Applicant had received the certified copies of the Decree on 29/3/2014 after he had made an application on 19/3/2014. On 5/11/2014 the Aurangabad Bench of this Court disposed of the Family Court Appeal on the ground of jurisdiction as according to the Aurangabad Bench, the Family Court Appeal would lie before the Principal Seat at Mumbai. On 8/1/2015 the Applicant applied for certified copies of the order passed by the Aurangabad Bench. The Certified copies were received by the Applicant on 28/1/2015 and thereafter, the instant Family Court Appeal has been filed on 19/3/2016. Hence, even if the time consumed by the Applicant in prosecuting the proceedings before the Aurangabad Bench of this Court is to be taken into consideration, still there is a substantial delay in filing the above Family Court Appeal, which delay, as is evident from the aforesaid dates, is at every stage. It is required to be noted that before the Aurangabad Bench, the Family Court Appeal was also filed 76 days after the period of limitation had got over.

4 After the Aurangabad Bench disposed of the Family Court Appeal

on 5/11/2014, the certified copies were applied for by the Applicant on 8/1/2015 i.e. almost after a period of 2 months. Thereafter, even after the certified copies were received on 28/1/2015, the instant Family Court Appeal was filed on 19/3/2016 i.e. after a period of one year and two months had lapsed on the certified copies having been received by the Applicant from the Aurangabad Bench. Hence, as indicated above, the delay on the part of the Applicant is at every stage.

5 It is required to be noted that after the decree of restitution of conjugal rights was passed in favour of the Applicant herein, they seem to have resided together for some time and thereafter, the instant Marriage Petition for divorce under Section 13(1)(i-a) came to be filed by the Respondent-wife. The learned Judge of the Family Court has recorded the findings as regards the ground of cruelty, which was the ground alleged by the Applicant.

6 In so far as the delay in filing the above Family Court Appeal is concerned, the reasons therefor can be found in paragraph-5 of the Civil Application. The said reasons are revolving around indisposition of the Applicant as also the alleged indisposition of his mother. The said ground can

therefore, hardly justify the delay at every stage. The conduct of the Applicant as can be seen is indolent and casual in prosecuting the proceedings. Such conduct cannot be condoned having regard to the fact that the Applicant was involved in matrimonial proceedings. In our view therefore, on the basis of the case made out vide averments made in paragraph-5, discretion cannot be exercised in favour of the Applicant. Hence, the Civil Application is rejected.

7 In view of the rejection of the above Civil Application, the above Family Court Appeal does not survive and to accordingly stand disposed of as such.

[SMT.SADHANA S. JADHAV,J]

[R.M.SAVANT, J]