

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 182 OF 2015
IN
FAMILY COURT APPEAL St. NO. 12763 of 2015**

Mrs. Geeta Vijay Mishra

..Applicant

Vs.

Vijay Shobnath Mishra

..Respondent

Mr. Anand Shinde for the Applicant

Mr. Sandeep Mishra for the Respondent

CORAM :R. M. SAVANT, &

SMT. SADHANA S JADHAV JJ

DATE : 28th JUNE, 2017

P.C.

1 The above Civil Application has been filed seeking condonation of delay of 372 days in filing the above Family Court Appeal. The Family Court Appeal is filed challenging the judgment and order dated 17-1-2014 passed by the Learned Principal Judge of the Family Court Thane. By the said order, the Petition filed by the Respondent herein being Marriage Petition No.A-472 of 2010 (M.P. No.181 of 2009) came to be allowed and the marriage between the Applicant and the Respondent came to be dissolved and it was held that the Applicant i.e. the Respondent therein is not entitled to claim any maintenance from the Petitioner i.e. the Respondent herein.

2 The Applicant is a permanent resident of Singapore. The Applicant and the Respondent went to Singapore after their marriage and the

marriage was also registered at Singapore. The Marriage Petition came to be filed by the Respondent under Section 13(1)(i-a) of the Hindu Marriage Act. The divorce sought was on the ground of cruelty and desertion. The Applicant was the Respondent to the said Marriage Petition filed her Written Statement and affidavit of evidence, however, the Applicant did not participate in the trial and the trial therefore proceeded in the absence of the Applicant and the Marriage Petition as indicated above came to be allowed and a decree of divorce came to be passed. The delay is sought to be explained on the ground that the Applicant does not have place for residence in Mumbai and that out of the amount of maintenance of Rs.4000/- which was granted, it was difficult for the Applicant to sustain herself in Mumbai. It is further stated that though the uncle of the Applicant resides in Mumbai, he resides in a chawl with his family members. It is further stated that the said fact compelled the Applicant to return back to Singapore and that thereafter she was suffering from pneumonia and was facing tremendous financial problems. It is further stated that she returned to India however on account of the health issues that her father was facing, she returned back to Singapore on 12-10-2014. It is further stated that she received a certified copy of the order dated 17-1-2014 on 13-11-2014 through Advocate Ms Savita Pethe. It is further stated that thereafter she tried to engage an Advocate for filing an Appeal against the decree in which process time was lost and therefore the delay of 372 days in filing the above Family Court Appeal has occasioned. It is the case of the

Applicant that the delay is not intentional and deliberate and has according to her occurred on account of the circumstances mentioned hereinabove.

3 Heard, the Learned Counsel for the parties.

4 The Learned Counsel for the Applicant would reiterate the case of the Applicant as set out in the Civil Application. The Learned Counsel admits that the Applicant is a resident of Singapore whereas the Respondent was a resident of Mumbai and it is after their marriage that they went to Singapore and were residing in Singapore.

5 Having heard the Learned Counsel for the Applicant, the question that arises whether case for exercise of discretion in the matter of condonation of delay of 372 days in filing the Appeal is made out. It is required to be noted that the Applicant did not participate in the trial after filing the affidavit of evidence and after the evidence of parties was completed. It seems that the Family Court decided the matter a good two years after the parties had completed their evidence. Hence the Applicant had ample opportunity to appear in the proceedings if she wanted to. However, it seems that for the reasons best known to the Applicant, she did not participate in the proceedings after the recording of the evidence was complete. No justifiable reason can be seen from the averments made in the Civil Application for the Applicant to keep away from the trial. In so far as the delay of 372 days is concerned, the reasons which have been set out in the above Civil Application cannot be the

reasons which can be said to constitute sufficient cause for the delay of 372 days. In a matter relating to a matrimonial dispute between the spouses, it is expected that the parties are vigilant and adopt appropriate proceedings against the orders or judgments of which they are aggrieved of. However, in the instant case, the reasons set out in the above Civil Application cannot be said to justify the said huge delay of 372 days in filing the above Civil Application. In so far as the Marriage Petition is concerned, the Family Court has decreed the Marriage Petition for the reasons mentioned in the impugned judgment and order. The Learned Principal Judge of the Family Court has arrived at a conclusion that the Applicant was depriving the Respondent of the conjugal rights which according to the Learned Judge amounted to cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act. Hence the Learned Principal Judge of the Family Court has recorded a finding of fact on the basis of the material on record. In our view, the filing of the above Family Court Appeal considering the past conduct of the Applicant is an after thought. Hence no discretion can be exercised in favour of the Applicant. The Civil Application is accordingly rejected.

6 In view of the rejection of the above Civil Application, the above Family Court Appeal which suffers from the delay of 372 days does not survive and to accordingly stand disposed of as such.

[SMT SADHANA JADHAV, J]

[R.M.SAVANT, J]