

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

901 CIVIL APPLICATION NO. 2332 OF 2018
IN RAST/1421/2018

REENA MAHENDRA WAHULE
VERSUS
MAHENDRA KADUBA WAHULE

...

Advocate for Applicant : Mr. Deshpande Abhishek C.

...

AND

902 CIVIL APPLICATION NO. 2333 OF 2018
IN RAST/1418/2018

REENA MAHENDRA WAHULE
VERSUS
MAHENDRA KADUBA WAHULE

...

Advocate for Applicant : Mr. Deshpande Abhishek C.

...

**CORAM : T.V. NALAWADE AND
ARUN M. DHAVALA, JJ.**

DATED : February 22, 2018.

ORDER :

1. The first application is filed for condonation of delay caused in filing review application against the decision of Family Court Appeal No. 18/2013 and the second proceeding is filed for condonation of delay caused in filing review application against the decision of Family Court Appeal no. 17/2017. The submissions made by the learned counsel for the applicant that due to oversight the date of pronouncement of judgment is

mentioned as 15.11.2017 can be accepted as the matter was reserved for judgment on 14.11.2017 and the judgment must have pronounced after that date. Even if it is accepted that the delay needs to be condoned, the learned counsel for the applicant is expected to show that in review applications notice need to be issued and proceeding is within the scope of review.

2) The learned counsel for applicant is placing reliance on the copy of reply notice dated 2.12.2011 given by wife to the notice sent by husband dated 17.11.2011. He submitted that in the notice dated 17.11.2011 the husband had mentioned all the grievances, but after that husband had called the wife back to the matrimonial house and due to that, it could have been presumed that the husband had condoned everything. He submitted that by giving reply to the notice of husband, the wife had expressed willingness to return back to the matrimonial house and in addition, the wife even had filed the proceeding for restitution of conjugal rights. According to him, these circumstances ought to have been considered by this Court, but they could not be considered as the reply to the notice was not filed in a proceeding filed under section 9 and the also in a proceeding filed section 13 of the Hindu Marriage Act, 1955. He

submitted that copy of the said reply was filed in appeal, but that is not considered. However, he admits that necessary procedure which is required to be followed for production of additional evidence was not followed.

3) It is not disputed that in the evidence given before the Family Court, the wife did not refer to this reply and reply was not produced before the Family Court. While deciding both the Family Court Appeals, this Court considered the evidence which was actually given before the Family Court. The contention of the applicant wife that the papers of maintenance proceeding ought to have been considered by the Family Court, which was decided separately cannot be accepted at this stage. There is also no such procedure. It is not disputed that all the evidence which was given in aforesaid two proceedings was considered by the Family Court. Only on the basis of that, this Court decided both the appeals.

4) This Court has dismissed the proceeding filed by wife to challenge the decision of Family Court by which the proceeding filed for restitution of conjugal rights was dismissed. This Court has allowed the proceeding filed by the husband

which was filed against the decision of Family Court by which divorce was refused to the husband. This Court has considered the grounds like cruelty and desertion against the wife and on that basis the relief is given. In view of that circumstance, the new circumstance which the wife now wants to bring on the record could not have changed the decision of the Court. Thus, the present contention is not within the scope of review and so, both the applications stand rejected.

[ARUN M. DHAVAL, J.]

[T.V. NALAWADE, J.]

ssc/