

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 57 OF 2017
IN
FAMILY COURT APPEAL ST NO.1047 OF 2017**

Vipul Mansukhlal Sanghvi

..Applicant

Vs.

Hetal Vipul Sanghvi

..Respondent

Mr. P. N. Vira for the Applicant

Mr. Shashank Thatte a/w Ms Ketki Asgaonkar for the Respondent

**CORAM :R. M. SAVANT, &
SANDEEP K SHINDE,JJ**

DATE : 8th FEBRUARY, 2018

P.C.

1 The above Civil Application has been filed seeking condonation of delay of 607 days in filing the above Family Court Appeal. The reasons therefor are mentioned in the above Civil Application.

2 An Affidavit in Reply has been filed on behalf of the Respondent wife i.e. Hetal Sanghani opposing the above Civil Application. The above Family Court Appeal challenges the judgment and order dated 4-2-2015 by which Petition No.A-1059 of 2010 for divorce filed by the Appellant husband came to be dismissed, the counter claim filed by the Respondent wife came to be allowed and thereby conjugal rights between the parties were restored with a further direction that the girl child born out of the said wedlock to be taken

to the matrimonial home. By the impugned judgment and order dated 4-2-2015 Petition No.E-311 of 2010 filed by the Respondent wife was allowed and the Appellant husband was directed to pay Rs.15,000/- p.m. to the Respondent wife and Rs.10,000/- to the daughter Mehek for her maintenance, which direction was issued under Section 125 of the CrPC. The said part of the order also directs as to the date from which the said payment is required to be made. However, a very important event has taken place after the filing of the above Family Court Appeal in as much as the Respondent wife has filed a Petition for divorce being No.A-479 of 2017, which has been filed for divorce on the ground of cruelty under Section 13(1)(1-a) of the Hindu Marriage Act. For the sake of ready reference it would be apposite to refer to the prayers in the said Marriage Petition No.A-479 of 2017:

(a) this Hon'ble Court be pleased to dissolve the Petitioner's marriage solemnized on 30th April 2000 at Kora Kendra Hall, S. V. Raod, Borivali West, Mumbai as per Hindu Vedic Rites by passing a decree of divorce.

(b) this Hon'ble Court be pleased to direct the Respondent to pay a sum of Rs.2 crores (Rupees Two Crores only) towards lumpsum permanent alimony to the Petitioner.

(c) this Hon'ble Court be pleased to direct the Respondent to provide a separate 2 BHK residential accommodation in a decent locality in Borivali or in the alternative monthly rent of Rs.40,000/- for 2 BHK residential accommodation in Borivali along with a refundable deposit of Rs.1,50,000/-

(d) this Hon'ble Court be pleased to pass order to give legal custody of daughter Mehek to the Petitioner.

(e) this Hon'ble Court be pleased to pass an order directing the Respondent to return the Petitioner's streedhan as per Exhibit E.

(f) pending the hearing and final disposal of this Petition, the Respondent be directed to pay a sum of Rs.40,000/- (Rupees Forty Thousand only) per month towards rent for 2 BHK residential accommodation in Borivali along with a refundable deposit of Rs.1,50,000/-

(g) the Respondent be directed to pay a sum of Rs.2 lakhs (Rupees 2 lakhs only) to the Petitioner towards cost of litigation.

(h) for such and other reliefs as the nature and circumstances of the case may require.

A reading of the said prayers therefore discloses that vide prayer clause (a) the Petitioner wife in the said proceedings has sought divorce by dissolution of the marriage between her and her husband Vipul which was solemnized on 30-4-2000. By prayer clause (b) she has sought a permanent alimony of Rs.2 crores and by prayer clause (c) she has sought separate 2 BHK residential accommodation in a decent locality in Borivali or in the alternative monthly rent of Rs.40,000/- for 2 BHK residential accommodation in Borivali along with a refundable deposit of Rs.1,50,000/-. By prayer clause (d) legal custody of the daughter. Hence a reading of the aforesaid prayers made in the Petition filed by the Respondent wife makes it clear that the wife has now sought divorce from the Respondent husband whereas in the earlier round she

was opposing the divorce which was sought by the Applicant husband. Hence the situation has undergone a change during the pendency of the above Family Court Appeal.

3 The Learned Counsel appearing for the Appellant Mr. Vira accepts the fact that the Respondent wife has now filed a Petition for divorce, but has shown his concerned in so far as prayer clauses (b) to (d) of the said Marriage Petition No.A-479 of 2017, is concerned. Since the Respondent wife has now sought divorce from the Appellant husband by filing her own proceedings, in our view it is not necessary to dilate further on the instant Civil Application filed by the Appellant husband seeking condonation of delay of 607 days in filing the above Family Court Appeal.

4 In the light of the supervening event of the Respondent wife filing a Petition for divorce, in our view the following directions would meet the ends of justice:

(i) It is not necessary to entertain the above Civil Application seeking condonation of delay of 607 days in filing the above Family Court Appeal. In Marriage Petition No.A-479 of 2017 the Appellant herein i.e. the husband would take such stand as he deems appropriate especially having regard to the fact that he has sought to challenge the dismissal of his Petition for divorce by

filing the above Family Court Appeal. This covers the relief sought vide prayer clause (a) of the said Petition No.A-479 of 2017.

(ii) In so far as the reliefs sought vide prayer clauses (b) to (d) of the said Marriage Petition No.A-479 of 2017 are concerned, the reliefs sought vide the said prayers would be considered by the Learned Judge of the Family Court on their own merits and in accordance with law, uninfluenced by the observations or findings recorded in the impugned judgment and order.

(iii) We make it clear that we have not interfered with the order directing the maintenance of Rs.15,000/- to the wife and Rs.10,000/- to the daughter Mehek. The Appellant husband would continue to pay the same. However, the same would be subject to the decision that would be rendered in the Revision filed by the Appellant husband against the said part of the order.,

(iv) In the event, the Respondent wife withdraws the said Marriage Petition No.A-479 of 2017 for any reason, then the Appellant husband would be entitled to apply for revival of the above Civil Application seeking 607 days delay in filing the above Family Court Appeal.

(v) Since we have not gone into the merits of the case for condonation of delay, on such revival, the above Civil Application would be considered on its

own merits and in accordance with law.

(vi) It is expected that the arrears of maintenance if any be cleared within 6 weeks from date.

5 The above Civil Application and the above Family Court Appeal to accordingly stand disposed of in the aforesaid terms.

6 In view of the disposal of the above Family Court Appeal, Civil Application No.58 of 2017 for stay does not survive and to accordingly stand disposed of.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]