

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2631 OF2016

Savita Shreerang Chavan .. Petitioner
Versus
Sunil Shreerang Chavan and ors .. Respondents

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Mr.Rahul S. Kadam for the petitioner.
Mr.N.A.Shaikh for the respondent nos.1 to 3.

CORAM: SMT.BHARATI H. DANGRE, J
DATED : 4th APRIL 2018

P.C:-

1 The present Writ Petition is filed by the petitioner wife challenging the order passed by the District Judge, Pune on a Miscellaneous Application No.98 of 2014, praying for condoning the delay of 18 years 6months 24 days in setting aside the judgment delivered on 10th August 1983. It is the case of the petitioner that the petitioner is a widow of Shrirang Chavan and till he died in the year 2012, the petitioner and the husband were sharing the same household and residing under the same roof. However, subsequent to his death, it was revealed that on 10th August 1983, the 6th Joint Civil Judge, Sr. Division, Pune, on a petition filed by the husband had dissolved the marriage solemnized between the parties on 13th June 1964 on the ground

of desertion. It is the specific contention of the petitioner that the address shown in the judgment delivered by the Court was never the address at which he was residing, and in fact, it is an ex-parte decree where she was not represented at all. She, therefore, moved an application under Order IX Rule 13 for setting aside the said judgment/order along with an application for condonation of delay. She explained the delay of 18 years 6 months 24 days on the count of the fact that she had no knowledge of such a judgment/decreed being passed against her back and it was only when she happened to have the knowledge, she approached the Court and therefore, the delay has occasioned.

The Court below passed an order on 8th September 2015 which reads thus :

“Perused the application and say. It appears that the person against whom the order is set aside is (Not legible) that person is expired. Hence, the present circumstances, this application is not legal, therefore it is rejected”.

2 The impugned order do not take into consideration the provisions of Order IX Rule 13 and Order XXII Rule 1 of the Code of Civil Procedure, which deals with an application for setting aside the decree passed ex-parte and specifically Order 22

Rule 1 which provides that there will be no abatement of a Court on a party's death if a right to sue survives. The Hon'ble Apex Court dealing with an identical situation in case of ***Smt.Yallawwa Vs.Smt.Shantavva***,¹ has held that after a decree of divorce is obtained by the petitioner husband against his wife, she has a right to file an appeal and such an appeal does not abate on account of the respondent husband, whether such death takes place prior to filing of the appeal or pending appeal. The Apex Court has also observed that if ex-parte decree of divorce is obtained against the wife, and thereafter, if the husband dies, the aggrieved wife can maintain an application under Order IX Rule 13 of the Code of Civil Procedure, even though the husband might have died prior to the moving of that application or during the pendency of such application. It is held by the Apex Court that in all such cases, the legal heirs of the deceased husband can be brought on record as opponent or respondent in such proceedings by the aggrieved spouse, who makes a motion for setting aside the said decree. The judgment of the Apex Court squarely covers the case in hand and the order passed by the learned Judge without taking into consideration the legal provisions and the settled position of law and rejecting the application merely on the ground that since the person against whom the order is sought to be set

¹ AIR 1987 SC 35

aside, has expired, the application for condonation of delay is not held to be tenable, appears to be an erroneous view.

3 In such circumstances, the impugned order is quashed and set aside. The matter is remanded back to the Civil Judge, Sr. Division, Pune and it is directed that on consideration of the explanation offered in the Miscellaneous Civil Application No.98 of 2014, the learned Judge would proceed with the hearing of the application and would deal with the matter on its own merits within a stipulated period of two months from today.

(BHARATI H. DANGRE, J)