

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

**CIVIL APPLICATION NO.119 OF 2018
IN
CIVIL APPLICATION STAMP NO.21220 OF 2017
IN
FAMILY COURT APPEAL NO.102 OF 2017**

**Mahindar Yerram Shetty : Applicant.
Versus
Uma Mahindar Shetty and ors. : Respondents.**

**ALONGWITH
CIVIL APPLICATION STAMP NO.21220 OF 2017
IN
FAMILY COURT APPEAL NO.102 OF 2017**

Mahindar Yerram Shetty : Applicant.

In the matter between

**Uma Mahindar Shetty & ors. : Appellants
Versus
Mahindar Yerram Shetty : Respondent.**

Mr. S P Dighe for the Applicant in both the Civil Applications.

**CORAM : R. M. SAVANT &
N. J. JAMADAR, JJ.
DATE : 27th NOVEMBER 2018**

P.C.

1 The above Civil Application No.119 of 2018 has been filed for
condonation of delay of 62 days in filing the same and for restoration of the
Civil Application Stamp No.21220 of 2017 which has been dismissed for non-
prosecution on account of the non-removal of the office objections.

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2 The delay of 62 days in filing the above Civil Application No.119 of 2018 is sought to be explained by the reasons which are mentioned in paragraphs 4, 5 and 6 of the Civil Application. The sum and substance of the reasons is that the Applicant was labouring under an impression that the office objections have been removed though the same were not removed and it is only on account of the miscommunication between the Applicant and the clerk of his learned Advocate that the delay of 62 days in filing the Civil Application No.119 of 2018 has occasioned.

3 In so far as Civil Application Stamp No.21220 of 2017 is concerned the same has been filed for modification of the order dated 21/06/2017 passed in the above Family Court Appeal to the extent that it grants maintenance Rs.3000/- per month to the original Appellant No.2 Sudhira Shetty who is the second daughter of the Applicant/Appellant i.e. the father.

4 In view of the fact that the Applicant is seeking condonation of delay of 62 days in filing the above Civil Application No.119 of 2018 for restoration of the Civil Application Stamp No.21220 of 2017, we endeavoured to consider whether there was any merit in the said Civil Application Stamp No.21220 of 2017 so as to facilitate the condonation of delay. As indicated above by the said Civil Application Stamp No.21220 of 2017 the Applicant is

seeking modification of the order dated 21/06/2017 passed in the above Family Court Appeal to which order one of us R.M.Savant, J was a party. By the said order the maintenance of Rs.3,000/- was granted to the 2nd daughter of the Appellant-Husband Sudhira Shetty as it was found that the said Sudhira Shetty was not gainfully employed and was solely depend upon the maintenance. The relief sought in the said Civil Application Stamp No.21220 of 2017 is founded on the fact that the Applicant/original Appellant has after passing of the said order laid his hands on a document which indicates that the said Sudhira Shetty was gainfully employed and was therefore not in need of maintenance. The said document is in the nature of TDS certificate and the employer of the said Sudhira Shetty is one Factset System India Private Limited.

5 No doubt the said TDS certificate prima facie indicates that the said Sudhira Shetty has been employed. It is required to be noted that we had granted the said maintenance of Rs.3,000/- to the said Sudhira Shetty till she gets employed or till she gets married. Since the Appellant-Husband is the father of the said Sudhira Shetty who has been granted maintenance of Rs.3,000/- per month till she gets employed or till she gets married, though prima facie it seems that she is in employment of the said Factset System India Private Limited, we do not deem it appropriate to interfere with the maintenance granted to the said Sudhira Shetty and direct her to return the

maintenance which has already been paid. If the said Sudhira Shetty is in fact gainfully employed then it is up to her whether to accept the maintenance paid by the Applicant/Appellant i.e. her father having regard to our order dated 21/06/2017. We expect her to take a conscientious decision in that regard. This order we are passing in the peculiar facts and circumstances of the case where the Appeals filed by the parties have already been disposed of by the said order dated 21/06/2017.

6 Hence we do not find any merit in the above Civil Application Stamp No.21220 of 2017 filed for modification of the order dated 21/06/2017 so as to condone the delay of 62 days in filing the above Civil Application No.119 of 2018.

7 For the reasons afore-stated, there is no necessity for condoning the delay of 62 days in filing the above Civil Application No.119 of 2018. The same is accordingly rejected.

[N. J. JAMADAR, J]

[R. M. SAVANT, J]