

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

WRIT PETITION NO. 1396 OF 2018

Anshika Gaurav Singhal & Anr. ... Petitioners
V/s.
Gaurav Vipin Singhal & Anr. ... Respondents

Mr. Ashutosh Kaushik I/b Kaushik & Co. for the Petitioners.
Mr. Girish R. Agrawal for Respondent No.1.
Mrs. S.C. Kaushik, A.G.P. for the State.

CORAM : K.K. SONAWANE, J.

DATE : 17th JULY, 2018.

P.C. :

1 Rule.

2 Rule is made returnable forthwith.

3 The matter is taken up for final hearing on merit with the consent of both the parties. The Petitioners moved the present Petition agitating the validity and propriety of the impugned order passed by the learned Additional Sessions Judge, Pune, dated 24.01.2018 below Application (Exh.16). The learned Sessions Judge allowed the application for condonation of delay caused to present an Appeal against the order of learned Magistrate, Pimpri, Pune dated 22.07.2014 in O.M.A. No.42/2014. It has been contended that the Petitioners preferred an application seeking directions against the Respondent-husband for payment of E.M.I. of the flats

situated at Mauje Dapodi, District Pune and Mauje Dhanori, Tal. Haveli, District Pune. The learned Magistrate after hearing both sides, was pleased to allow the application and directions were issued to the Respondent-husband to make the payment of E.M.I. of both the flats regularly without any default. Being dissatisfied with the order passed by the learned Magistrate, the Respondent-husband was intending to prefer an Appeal before the learned Sessions Judge to redress his grievances. But, there was a delay to present an Appeal. Hence, the Respondent-husband filed an application bearing Criminal Misc. Application No.151 of 2017 for condonation of delay to prefer an Appeal against the impugned order passed by the learned Magistrate below Application (Exh.16). The learned Sessions Judge considered the rival submissions in the light of factual aspects and arrived at the conclusion that there is no impediment to condone the delay. Accordingly, the learned Sessions Judge allowed the Application and the delay caused for filing the Appeal came to be condoned subject to cost of Rs.5,000/- to be paid to wife or to be deposited in the Court on or before 07.02.2018. The learned Additional Sessions Judge passed the impugned order which is the subject matter of present Writ Petition.

4 The learned Counsel for the Petitioners vehemently submits that the learned Sessions Judge did not appreciate the facts and circumstances on record in its proper prospective and committed error in condoning the delay

caused in presenting the appeal, on payment of cost of Rs.5,000/- to the wife, for inconvenience caused to her. Learned Counsel explained the circumstances in detail and contends that the Respondent-husband was aware about the entire proceeding pending before the learned Magistrate. He has also filed the Vakalatnama in the proceeding for authority to his counsel to appear and defend him. The parents of the husband also caused their appearance into the matter. Despite the same the Respondent-husband did not take action promptly to prefer an appeal within stipulated period. The intentional and deliberate negligence on the part of Respondent-husband is not liable to be condoned to allow him to file an appeal before the Sessions Judge. The learned Counsel requested not to nod in favour of husband for condonation of delay. He prayed to allow the Writ Petition and set aside the impugned order passed by the learned Sessions Judge.

5 The learned Counsel for the Respondent-husband vociferously opposed the contentions put forth on behalf of Petitioners and submits that the learned Sessions Judge has appreciated the factual aspect in proper manner. The delay has been condoned by the learned Sessions Judge for awarding substantial justice. He relied upon the guidelines delineated by their Lordships of Hon'ble Apex Court in the case of *N. Balakrishnan vs. M. Krishnamurthy*, (1998) 6 SCC 123. According to the learned counsel for the Respondent-husband after condonation of delay the proceeding of appeal

came to be registered. The Petitioner-wife appeared in the appeal. After compliance of procedural formalities, the appeal was listed before the Sessions Judge for final hearing on merit. The matter was argued on merit on behalf of both sides at length. At this juncture the matter/appeal is in the seine of Sessions Judge for final verdict. Therefore, the learned Counsel for the Respondents requested to dismiss the Writ Petition.

6 Having given anxious consideration to the argument advanced on behalf of both sides, I find the contentions put forth on behalf of learned counsel for the Respondent-husband more sustainable and considerable one. It is the settled rule of law that while dealing with the application for condonation of delay, the Court should adopt liberal and pragmatic approach by avoiding pedantic approach. It has been delineated that the Court should give priority to award substantial justice into the matter instead of giving much more emphasis on technical issues. In the matter in hand, it is not put in dispute that while pending the proceeding before the learned Magistrate, Respondent-husband was in abroad. It is true that he was represented by his Counsel into the matter before the learned Magistrate. It is also not denied that his parents appeared in the proceeding. In such circumstances, it has been alleged that Respondent-husband was aware about the progress of the matter before the learned Magistrate and it was reasonable expectation that he should take prompt steps for filing appeal within stipulated period.

However, in view of nature of the subject matter being a matrimonial dispute, it would difficult to appreciate the contentions put forth on behalf of Petitioner-wife to preclude the Respondent-husband from approaching to the appellate forum for substantial justice. It would be reiterated that the dispute pertains to the interim relief of maintenance granted ex-parte by the learned Magistrate against Respondent-husband. It has been asserted that during the relevant period the Respondent-husband was in abroad and after returning to India, he procured the certified copy of the impugned order passed by the learned Magistrate. Thereafter, he was intending to prefer an appeal but there was delay and, therefore, he moved an application for condonation of delay to present an appeal. After appreciating the factual score, I find it justifiable to afford a reasonable opportunity to the Respondent-husband to approach to the appellate forum to ventilate his grievance for redressal. It would not cause any injustice or prejudice to the Petitioner-wife. In contrast it would sub-serve the purpose in the interest of justice.

7 The another spectrum of the matter is that after condonation of delay by the learned Sessions Judge following impugned order, the proceeding of appeal came to be registered for further process. The Petitioner-wife appeared in the proceeding of the appeal through learned counsel. After procedural formalities, the appeal was listed for hearing on

merit. The parties to the appeal including the Petitioner-wife argued the appeal on merit at length. Now the learned Sessions Judge kept the present proceeding reserve for delivery of final verdict. In such advance stage of the proceeding of appeal which is at the fag-end of finality, it would unjust and improper to cause any interference in the jurisdiction of the learned Sessions Judge at the instance of Petitioner-wife and that too on the technical issue of condonation of delay. Absolutely, there is no propriety to cause any interference in the impugned order passed by the learned Sessions Judge at this belated stage. Therefore, in view of subsequent development in the proceeding it would preposterous and incomprehensible to cause any interference. It would justifiable to allow the learned Sessions Court to adjudicate the dispute on merit instead of appreciating the circumstances on technical issues of limitation. Hence, Petition being devoid of merit deserves to be dismissed.

8 In the above premises, the Petition stands dismissed in above terms. No order as to costs.

9 Rule discharged.

(K.K. SONAWANE, J.)