

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

**CIVIL APPLICATION NO.241 OF 2018
IN
FAMILY COURT APPEAL (ST.) 15677 OF 2018**

Kiran Ananda Bele

.. Petitioner

V/s.

Vaishali Kiran Bele

.. Respondent

Mr.Arjun S. Kode for the applicant
Mr.Suryakant Pise for the respondent

**CORAM: K.K. TATED &
M. S. KARNIK, JJ.**

DATED : AUGUST 16, 2018

P.C. :

1 Heard.

2 By this Civil Application, Applicant husband is seeking condonation of 62 days delay in filing the Family Court Appeal challenging the judgment and decree dated 10.10.2017 passed by Family Court at Bandra, Mumbai allowing Respondent wife's petition for decree of restitution of conjugal right under section 9 of the Hindu Marriage Act, 1955.

3 The learned counsel for the Applicant submits that during this

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period, the Applicant was not keeping well. Hence, there was delay in preferring the Family Court Appeal. He submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay and matter be heard on its own merits. He submits that if delay is not condoned, irreparable loss will be caused to the Applicant.

4 On the other hand, the learned counsel for the Respondent wife vehemently opposed the present Civil Application. He submits that there is no explanation in the entire Civil Application why there was delay of more than 62 days in filing the Family Court Appeal. He submits that only in paragraph (a) on page 3, there is explanation of 62 days delay which reads thus:

*“(a) The Applicant states that after Impugned Order was passed by the Hon'ble Family Court, the Applicant was not keeping well. Therefore, he could not approach his Advocate and instruct them to file the Appeal. Therefore, the Appeal could not be file within time. Copies of medical papers of the Applicant are collectively annexed herewith and marked as **Exhibit “B” Colly.**”*

5 The learned counsel for the respondent wife further submits that as on today more than Rs.5,55,000/- is due and payable by the Applicant towards the maintenance charges. Therefore, there is no question of allowing the present Civil Application.

6 We have heard both the sides.

7 Considering the submissions made by the learned counsel for the Applicant and the reason disclosed in the application, we are satisfied

that delay in preferring the Family Court Appeal is required to be condoned. But at the same time, they have to pay sum of Rs.6,000/- by way of cost to the Respondent. Hence, following order is passed:

- a) Delay in preferring the Family Court Appeal is condoned.
- b) Applicant to pay cost of Rs.6,000/- to the Respondent within two weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
- c) Applicant to place on record documentary proof to show that he has paid the cost to the Respondent or her advocate within stipulated time.
- d) Civil application stands disposed off accordingly.

(M. S. KARNIK, J.)

(K.K. TATED, J.)