

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

**CIVIL APPLICATION NO.231 OF 2017  
IN  
FAMILY COURT APPEAL NO.217 OF 2008**

**WITH**

**CIVIL APPLICATION NO.232 OF 2017  
IN  
FAMILY COURT APPEAL NO.216 OF 2008**

Smt.Prarabdha Pradeep Manjrekar and Ors. .. Applicants

vs.

Mr.Pradeep Govind Manjrekar .. Respondent

Mr.S.V.Sadavarte for the applicants

Mr.R.S.Datar for the respondent

**CORAM : K. K. TATED &  
SARANG V. KOTWAL, JJ.  
DATE : JANUARY 25, 2018**

**P.C.:**

1. Heard the learned counsel for the parties.
2. These Applications are preferred by wife for restoration of Family Court Appeals which stand dismissed for non compliance of conditional order dated 21.06.2012 passed by this court.

3. Family Court Appeal No.217 of 2008 is filed by wife against refusal to grant maintenance charges and Family Court Appeal No. 216 of 2008 is filed against grant of divorce.

4. The learned counsel for the Applicant submits that Applicant filed both the First Appeals before this court on 10.11.2008. Thereafter, same were admitted by this court on 8.12.2008 and 24.4.2009. He submits that matter appeared before this court on 21.6.2012 along with all other connected matters in which the office raised objection. He submits that this court passed common conditional order dated 21.06.2012 directing all parties in that group to remove office objections within six weeks, failing which the Appeals shall stand dismissed without further reference to the court. He submits that for want of knowledge about the said order, it remained on the part of Applicant to remove all office objections.

5. The learned counsel for the Applicant submits that Applicant received letter dated 20.6.2017 from the Respondent husband calling upon her to hand over vacant and peaceful possession of the disputed flat no.401. She immediately contacted her Advocate and at that time, she learnt that advocate's clerk failed and neglected to remove office objections immediately. Hence, matter stands dismissed in view of conditional order dated 21.6.2012. The learned counsel for the Applicant submits that because of mistake on the part of advocate, litigant should not suffer. He submits that in the present proceeding, advocate on record specifically directed his clerk to remove all office objections. In support of his contention, the learned counsel for the

Applicant relies on paragraph 2 and 4 of the Civil Application.

6. The learned counsel for the Applicant submits that in the present Civil Application, Respondent filed rejoinder dated 23.1.2018. From that rejoinder, Applicant learnt that Respondent remarried on 11.11.2008. He submits that though the Respondent remarried after dismissal of First Appeal for default, matter is required to be heard on its own merits so that court can decide whether Applicant is entitled for any other relief in the interest of Justice. He submits that in the interest of Justice, this court be pleased to recall the conditional order dated 21.6.2012 in respect of the present Family Court Appeals and restore the matter on its own merits.

7. The learned counsel for the Applicant submits that the only objection was to take appropriate steps for service on respondent. He submits that as the respondent already appeared in the present proceeding, nothing will survive in that objection also. The learned counsel for the Applicant on the basis of these submissions submits that in the interest of Justice this Hon'ble Court be pleased to recall the order dated 21.6.2012 and restore both the Family Court Appeals on board for hearing on its own merits. He submits that if order is not recalled, irreparable loss will be caused to the Applicant.

8. On the other hand, the learned counsel for the Respondent husband vehemently opposed the present Civil Application. He submits that though both the First Appeals were admitted by this court, there was no stay operating against him. He submits that present Civil

Applications are filed by wife after more than four years from the date of dismissal. He submits that Applicant has not shown sufficient cause for condonation of inordinate delay of more than four years in filing the present Civil Applications. He submits that the respondent got remarried on 11.11.2008. To that effect, the respondent filed his additional affidavit dated 23.1.2018 with Exhibit-A i.e. certificate of registration of marriage issued by the competent authority. He submits that in view of subsequent development, nothing is survived in the present proceedings. Apart from that, the reason given by the Applicant for restoration of First Appeals is mistake on the part of advocate's clerk, that cannot be a reason for restoration of First Appeal after more than 4 years. He submits that if present Civil Application is allowed, irreparable loss will be caused to the respondent husband because he already remarried in 2008 itself. Therefore, Civil Application is required to be dismissed with costs.

9. We have heard both the sides at length. It is to be noted that both the Civil Applications are preferred by Applicant wife for restoration of Family Court Appeals which stand dismissed, in view of conditional order dated 21.6.2012 for non removal of office objections.

10. Once the litigation is filed, litigant always depends upon their advocate to remove office objections. It is the duty of the advocate or his clerk to remove office objections. Because of mistake on the part of advocate, litigant should not suffer. In support of his contention, the learned Counsel for the applicant relies on the judgment of the Apex Court in the matter of *Smt. Lachi Tewari and Ors. vs. Director of*

**Land Records and Ors., 1984 Supp. (1) SCC 431** in which it is held that if the Petitioner / plaintiff engages an Advocate, that must be considered as good ground for condonation and restoration of application. Paragraph 4 of the said judgment reads thus:

*“4. The mere narration of facts would suffice to focus attention on what point is involved in this appeal. The petitioner obtained rule nisi in 1976 and waited for 7 years for its being heard. Suddenly one day the High Court consistent with its calender fixed the matter for hearing on April 21, 1983. The petitioner had taken extra caution to engage three learned Counsels. We fail to see what more can be expected of him. Further we fail to understand what more steps should have taken in the matter to avoid being thrown out unheard. In Rafiq and Anr. v. Munshilal and Anr., (1981) 3 SCR 509, this Court succinctly brought out this aspect. Says the Court :*

*The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.*

*Again in Goswami Krishna Murarilal Sharma v. Dhan Prakash and Ors., (1981) 4 SCC 574, this Court reiterated this very principle. And that squarely applies to the facts of this case. On this short ground we allow this appeal, set aside the order of the High Court dated April 21, 1983 as also the order refusing to recall the earlier order dated May 2, 1983 and restore the civil rule to the file of the High Court to be disposed of by the High Court on merits consistent with its calender.*

11. About the delay of more than 4 years, it is to be noted that when the Applicant wife received letter dated 20.6.2017 from husband, she immediately contacted her advocate and made enquiry and at that time she learnt that matter stand dismissed for non-removal of office objections. Immediately within 15 days i.e. 4.7.2017 she filed present Civil Application for restoration of First Appeal. Considering these facts and the law laid down by the courts we are of the opinion that Applicant has made out a case for allowing the present Civil Applications. In any case Applicant wife to pay cost of Rs.1500/- to the Respondent husband. Hence, following order is passed:

- a) Both the Civil Applications are allowed.
- b) Family Court Appeals No.216 of 2008 and 217 of 2008 are restored on file for hearing on its own merits, by recalling the conditional order dated 21.6.2012 passed by this court.
- c) Applicant to pay cost of Rs.1500/- in each matter to the Respondent within four weeks from today and file receipt in the Registry to that effect, failing which both the Civil

Applications shall stand dismissed without further reference to the court.

**(SARANG V. KOTWAL, J.)**

**(K.K.TATED, 3J.)**