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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

914 CIVIL APPLICATION NO.1431 OF 2018  
IN SAST/498/2018

ARCHANA SANDEEP KAPSE  
VERSUS  
SANDEEP EKNATH KAPSE

...

Advocate for Applicant : Shri Kshitij Surve  
Advocate for Respondent : Shri M.M. Bhokarikar

**CORAM: V.L. ACHLIYA, J.**

**DATE: 06.09.2019**

**PER COURT :**

- 1] This application is filed for condonation of 898 days delay in filing appeal.
- 2] Heard learned counsel for the applicant and the respondent.
- 3] In brief, it is the contention of learned counsel for the applicant / appellant that the trial Court has dismissed the petition filed by the respondent seeking divorce. The appellate Court has reversed the judgment and decree passed by the trial Court and passed the decree of dissolution of marriage between the appellant and the respondent. After receipt of notice of appeal, the applicant has engaged the Advocate to represent her in appeal. The Advocate representing the appellant told her that it will take long time to list the appeal for

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final hearing. She was under the impression that her Advocate is properly representing her in the case and attending the case before the appellate Court. In the year 2015, the applicant came to know about passing of decree after receipt of notice in the writ petition filed by the respondent. Due to absence of her Advocate, the decree was passed in the matter. The Advocate representing the applicant has not informed the decision in the case. In this background, the learned counsel submits that the delay caused in filing appeal was not intentional and deliberate and occurred solely due to negligence and non-communication of judgment and decree passed in the matter by the Advocate representing her before the first appellate Court.

4] Learned counsel for the respondent opposed the application with contention that the reasons assigned for condonation of delay are false and concocted. The applicant was fully aware about the decision in the case. In order to overcome the delay caused in filing appeal, false story has been cooked to get the delay condoned. It is further submitted that after the judgment and decree passed in the matter, the respondent has

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contracted marriage and in that view, no cause survives to prosecute the appeal.

5] On due consideration of the submissions advanced in the light of cause assigned, I am of the view that the delay deserves to be condoned. For the fault on the part of Advocate representing the party, the litigant should not suffer. I am, therefore, inclined to allow the application and condone the delay. So far as submissions advanced in respect of merits of the case that the respondent has performed marriage after decision in the appeal, the same will be considered at the time of admission of appeal.

6] Accordingly, the application is allowed in terms of prayer clause (B). Delay condoned. Appeal be registered and placed for admission on 3.10.2019. Shri M.M. Bhokarikar Advocate waives notice before admission on behalf of respondent.

7] S.O. to 3.10.2019.

**(V.L. ACHLIYA, J.)**