

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

**906 CIVIL APPLICATION NO.13904 OF 2018
IN FCAST/20570/2018**

**SAMEER PANDURANG PHULE
VERSUS
YASHODA @ NEETA @ NEHA SAMMER PHULE**

...
Advocate for Applicants : Mr. V.A. Bagdiya
Advocate for Respondent : Mr. A.T. Jadhavar
...

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : 16/01/2019.**

PER COURT :

1. The application is filed for condonation of delay of 1401 days caused in filing appeal against the decision of H.M.P.No.A-232/2013 which was filed by the present applicant under section 9 of Hindu Marriage Act in the Family Court, Aurangabad. It appears that the present applicant did not turn up to prosecute the matter and the Trial Court dismissed the proceeding for want of prosecution. Both the sides are heard.

2. The submissions made show that the wife has filed petition for divorce and the learned counsel for wife submitted that the divorce is claimed on two grounds viz. desertion and cruelty. It can be said that in the divorce proceeding, it will be

open to the husband to show that he had not deserted the wife, but the wife had withdrawn from his society when there was no justifiable reasons for the same. Thus, the point involved in the present proceeding can be considered in the proceeding pending before the Trial Court. Further, there is delay of 1401 days caused in filing the proceeding of appeal and contention is that only when the husband received the notice of divorce proceeding, he realized that his proceeding is dismissed, is not acceptable. In ordinary course, he is expected to keep follow up on the proceeding and for more that two years he did not turn up to the Court to prosecute the matter and this approach of the husband can be considered in the divorce proceeding. This Court holds that in view of section 5 which gives discretion to the Court cannot be used in favour of husband. In the result, the application stands rejected.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/