

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

11 CRIMINAL WRIT PETITION NO. 1225 OF 2018

Umesh s/o Babasheb Gawali,
Age : 40 years, occu.: Legal Practioner,
R/o.: Village Pimpalgaon Kamleshwari,
Taluka : Washi, District : Osmanabad. ... PETITIONER
(Org. Applicant)

VERSUS

1. Rama w/o Umesh Gawali,
(Rama d/o Vithalrao Kale),
Age : 45 years, Occu.: Legal Practioner,
R/o.: Maitree Palace, 10/1, C-3,
Saubhagya Housing Society, Azad Chowk,
CIDCO, N-8, Aurangabad.
2. Maitree d/o Umesh Gawali,
Age : 7 years, Occu.: Student,
U/g of her real mother-
Respondent No.1. ... RESPONDENTS
(Org. Non-applicants)

...
Mr. Prasad V. Jadhavar, Advocate for petitioner
Mr. Rajendrreaa Deshmukh, Advocate for Respondents
...

CORAM : MANGESH S. PATIL, J.

DATE : 08.03.2019

ORAL JUDGMENT :-

Heard. Rule. Rule is made returnable forthwith. With the
consent of both the sides, the matter is heard finally.

2. In this writ petition, husband is impugning the order passed by the learned Additional Sessions Judge in Criminal Miscellaneous Application No. 162 of 2017 on 25 July 2018 thereby rejecting his application for condonation of delay of 32 days caused in preferring appeal under Section 29 of the Protection of Women from Domestic Violence Act 2005 against the order of the learned Judicial Magistrate, First Class passed in a proceeding under Section 12 of that Act initiated by respondent No.1-wife, dated 15 April 2017.

3. The learned advocate for the petitioner submits that without extending any opportunity to lead evidence the learned Additional Sessions Judge has straightaway rejected the application by the impugned order solely on the ground that the petitioner had failed to lead oral evidence and make himself available for cross-examination. In fact it was a matter of delay of merely 32 days in preferring the appeal. The law is well settled. He was not to gain anything by causing the delay. There was no material to show that the delay was caused

malafide with some ulterior motive. Therefore, in the facts and circumstances the delay could have been easily condoned by imposing some costs to compensate the respondents. Instead the learned Additional Sessions Judge has rejected the application and has thereby deprived the petitioner of the valuable right to be heard in appeal.

4. The learned advocate for the respondent submits that going by the cause putforth by the petitioner ex facie he had failed to demonstrate sufficient cause which could have enabled the Appellate Court to condone the delay. Rather there was mis-statement of facts. After alleging that the Magistrate had adjourned the matter to a further date and that in spite of that on the same day impugned order was passed is palpably not acceptable and does not appeal to a reasonable mind. Therefore, there was no sufficient cause demonstrated by the petitioner and no illegality committed by the learned Additional Sessions Judge in refusing to condone the delay.

5. I have carefully perused the papers. As can be seen from the impugned order, the learned Additional Sessions Judge expected the parties particularly the petitioner to have led evidence. He has not stated that the matter was ever fixed for leading evidence but he had failed to turn up or refused to step into the witness box or that he had not availed of the opportunity to lead evidence. If at all the learned Additional Sessions Judge wanted the parties to have led some evidence, in stead of hearing the arguments of both the sides before passing the impugned order he could have directed them to lead evidence. Instead of doing that he seems to have caught the petitioner on the wrong foot by expecting him to have led evidence and dismissing the application observing that he had failed to lead evidence.

6. Be that as it may, the learned Additional Sessions Judge has committed a gross illegality and has prevented the petitioner from prosecuting his legitimate right to prefer an appeal under Section 29 of the Domestic Violence Act.

7. It is trite that in the matters of condonation of delay the approach of the Court should be pragmatic rather than pedantic. It is obviously a harsh remedy and unless there is some strong reason which would demonstrate that the party guilty of causing the delay has some ulterior motive or his conduct is prompted by some mala fides, the delays should be condoned. In the matter in hand there was a delay of about 32 days and it was not of such a magnitude as would have compelled the learned Additional Sessions Judge to refuse to condone it.

8. In the facts and circumstances, in my considered view the delay deserves to be condoned by compensating the respondents in the form of costs.

9. The writ petition is allowed. The impugned order is quashed and set aside. The delay in preferring the appeal is condoned subject to the petitioner depositing an amount of Rs.5,000/- (Rs. Five thousand only) in the Appellate Court,

which shall be paid to the respondents as costs, to be deposited within four weeks.

10. Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

vsm/-