

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 91 OF 2018
IN
FAMILY COURT APPEAL (ST) NO. 3900 OF 2018
WITH
FAMILY COURT APPEAL (ST) NO. 3900 OF 2018
AND
CIVIL APPLICATION NO. 92 OF 2018

Daksha Piyush Paradva

.. Applicant

Versus

Piyush K. Paradva

.. Respondent

-
- Mr. Mandar Soman for the Applicant
 - Mr. Vishal Kale i/by Mr. Amey Deshpande for the Respondent
 - Mr. Piyush K. Paradva Respondent - Husband present.
-

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JULY 12, 2019.

P.C.:

1. This Civil Application is filed by the wife seeking condonation of delay of 2 years and 93 days in filing the Family Court Appeal. The FCA is directed against the judgment and decree dated 21.7.2015 passed by the Family Court, Pune in Petition No. A-866/2014 filed by the respondent-husband. Under the said judgment and decree,

the Family Court was pleased to grant the decree of divorce on the ground of desertion and cruelty. The applicant has sought to explain the delay on the ground that there was no proper service of summons on her of the said Family Court proceedings and the said proceedings thus proceeded exparte. She was not aware about such exparte decree till 10.10.2017 when the husband produced copy thereof in an application for maintenance filed BY her under Section 125 of Code of Criminal Procedure. According to the applicant, therefore, the appeal which was filed in January 2018 does not suffer from delay. In any case, the delay is sufficiently explained.

2. On the other hand, the case of the respondent - husband is that the wife was all along aware about the institution of the petition for divorce. She herself had given the number of Family Court Petition in her application for maintenance filed under Section 125 of the Code of Criminal Procedure. She cannot claim ignorance about such proceedings. Further, the attempts were made to serve the applicant the summons of the Family Court but she refused

to accept the same. Upon which, at the instance of the Family Court, paper publication was made in two local newspapers at two places having sufficiently wide circulation. Despite this, the applicant refused to participate in the Family Court proceedings. The respondent also pointed out that after waiting for the appeal period from the judgment of the decree, he has remarried on 21.10.2015.

3. Appearing for the applicant, learned Advocate Mr. Mandar Soman submitted that there was no attempt made to serve the summons of the Family Court through bailiff. In absence of failure report by the bailiff, service through alternative mode of dispatch through post was not permissible. The subsequent publication in the newspaper, therefore, also must fail on similar grounds. According to him, therefore, the entire proceedings of the Family Court being vitiated on account of this crucial error. He further submitted that the applicant - wife was employed in Police Department. From time to time, her headquarters were shifted. When the newspaper publications were made, she was under training at Rajkot. She, therefore, do not have

any knowledge about the Family Court proceedings and had not received the summons being issued by the Family Court. The applicant came to know about passing of the ex parte decree on 10.10.2017 when the husband produced the copy thereof in the proceedings under Section 125 of Code of Criminal Procedure. The delay caused in filing the application may, therefore be condoned. Mere fact that the husband has remarried would be of no consequence.

4. On the other hand, learned Advocate for the wife opposed this application strongly contending that the wife had all along the knowledge of the Family Court proceedings. She herself had given the details thereof with the number of Family Court Petition in her application for maintenance which was filed on 20.10.2014. The applicant has systematically avoided service of summons. On two occasions, the summons were dispatched at her residential address as well as at her workplace. The summonses at the residential address were returned with remark "left" and the summons sent at the workplace returned with remark "refused". The husband had thereafter made paper

publication. Thus, the applicant was duly served with the summons of the Family Court. She chose not to participate. The Family Court had also sent a copy of the decree to the applicant on 26.8.2015 at her address at Bhavnagar which also returned. The postal endorsement would show that on the previous day, the premises was found to be locked. Next day when the attempt to deliver was made, acceptance of delivery was refused. He further submitted that the husband has remarried in the meantime.

5. Having thus heard the learned Advocates for the parties and having perused the documents on record, we do not find this is a fit case where the delay caused in filing the FCA should be condoned. Considering from the date of decree and the granting set off for the appeal period, admittedly the appeal is beyond the period of limitation by two years and 93 days. It is true that the Courts ordinarily adopt liberal approach in condoning delay. Particularly, when it comes to Family Court issue, the Courts are always slow in confirming the divorce decrees on the ground of delay and latches. Nevertheless, the concept of sufficient ground for

condoning delay, cannot be discarded.

6. The facts of the present case are rather glaring. The applicant does not dispute knowledge of institution of the Family Court petition by the husband. She herself has filed Criminal Misc. Application for maintenance against the husband in October 2014 under the Code of Criminal Procedure. In her maintenance petition, she not only mentioned about such divorce petition but also given specific number thereof. Secondly, there were multiple attempts were made to serve her initially, as noted, through postal delivery. The envelop was returned with the remark "refused". Even thereafter, at the instance of Family Court, newspaper publications were made in two newspapers i.e Divya Bhaskar and Saurashtra Samachar in Rajkot and Bhavnagar editions. The same were published on 15.9.2014 when as per the applicant herself she was stationed at Rajkot undergoing her training. Both the newspapers have sufficiently wide circulation in the region.

7. We also cannot lose sight of the fact that the husband has remarried in 2015. Any liberal approach in condoning delay, would put a question mark on the validity of the said marriage which in facts of the present case, we are not inclined to do. Strictly speaking, learned Advocate for the applicant may be correct in pointing some technical errors in the service of summons, however, when we refuse to allow the applicant to cross the threshold of condoning delay and when we find that the issue is entirely technical in nature and that she had sufficient knowledge of the pendency of the proceedings of the Family Court petition, on such grounds, we are not inclined to grant the prayer for condonation of delay.

8. In the result, this Civil Application is rejected. Consequently, Family Court Appeal and companion Civil Application is also disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]