

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

**CIVIL APPLICATION NO. 192 OF 2019
IN
FAMILY COURT APPEAL NO. 42 OF 2014**

Mr. Arif Gani Shaikh	..Applicant.
Versus	
Mrs. Anjum Arif Shaikh	..Respondent.

Mr. V. S. Talkute, Advocate for Applicant.
Mrs. Nasreen Ayubi, Advocate for Respondent.

CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATED : 05th DECEMBER, 2019.

PC :

1. Heard the learned Counsel for the parties.
2. By this Civil Application, the applicant/husband is seeking to restore Family Court Appeal No. 42 of 2014, which was dismissed for non prosecution by order dated 16/08/2016 and also to condone the delay of 2 years and 180 days in filing the present application.
3. The learned counsel Mr. Talkute for the applicant submit that, in the present proceeding, initially the respondent/wife had filed a petition No.A-2764 of 2011 before the Family Court at Bandra, Mumbai, U/s.2(ii)(iii) r/w. (viii) of Dissolution of Muslim Marriages Act, 1939, for

divorce on the ground of cruelty. He submits that, the Family court by its impugned Judgment and Decree dated 29/10/2013 allowed said petition. Hence, the applicant has filed present Family Court Appeal.

4. Learned counsel for the applicant submits that, during the pendency of Family Court Appeal, the applicant and the respondent started residing together, hence, no one appeared on behalf of the applicant when the matter was called out.

5. Learned Counsel for the applicant further submit that the applicant has procured a flat in the name of the respondent on leave and license basis also. He relies on the copy of said leave and license agreement. He submit that, because of these facts, it remained on the part of the applicant to inform his advocate to take appropriate steps in the present matter. He submit that the applicant has good chances of succeed in the present matter. Hence, in the interest of justice this Hon'ble court be pleased to condone 02 years and 180 days delay in filing the application and the Family Court Appeal be restored on file for hearing on its own merit.

6. On the other hand, learned counsel Ms. Nasreen Ayubi for the respondent vehemently opposed the present application. She submits that the applicant has failed and neglected to disclose sufficient cause for condonation of two

years and 180 days delay in filing the present application. Learned Counsel for the respondent submits that, the respondent had also filed 'Darul Quaza' before All India Muslim Personal Law Board (hereinafter referred to as 'AIMPLB' for short) for divorce (Talaq). She submit that, before AIMPLB the applicant/husband was present. Considering the submissions of both the parties, AIMPLB given decision dated 21/10/2015. She relies on para 2 of the said order which reads thus:

“Both the parties should intend to get the consent of their Almighty Allah, the sustainer of the world, so that they would be success in both here and in the hereafter, as per the order of Allah in Holy Quraan, that means: O Muhammed (sws) by the oath of your God, they would not be considered as the true believers, until they made you the judge for the disputes occurred amongst them, then they feel no distress in their heart upon what you have decided, but they accept in happily, with open heart.

The order/decision is as under:

JUDGMENT

Today, I have terminated and revoked the marriage between Mrs. Anjum Pathan D/o Raju Khan Pathan and the defendant Mr. Arif S/o Gani Shaikh, due to disputes, raised by the claimant, impossibility of settlement and running off the purpose of

the marriage, to avoid from more trouble, to save them from unfairness, keep her safe from harm, closing the doors of sins, and protecting her modesty and glory. Therefore, the claimant is no more the wife of defendant, and she is free and independent after passing her Iddat period.”

7. Learned Counsel for the respondent submits that, reading of order dated 21/10/2015 passed by the AIMPLB itself shows that both the parties were present and taken divorce as per Muslim Law, therefore, there is no question of allowing the present application. She submits that the applicant failed and neglected to disclose sufficient cause for condoning the delay of more than 2 years in the present application. Hence, there is no reason to allow this application and the same is required to be dismissed with costs.

8. We heard both the parties at length.

9. Bare reading of application shows that the applicant has failed and neglected to disclose any sufficient reason for condonation of two years and 180 days delay in filing the present application. The record and proceeding shows that no one appeared on behalf of the applicant before this court on 15/10/2015 and 19/07/2016. Hence, this court has dismissed the Family Court Appeal No.42 of 2014 by

order dt.16/08/2016 for non prosecution. The reason given by the applicant in the present civil application cannot be construed as sufficient cause for condoning the delay of more than 2 years in filing the present application. Apart from that, both the parties remained present before AIMPLB. Said Board granted (Talaq) divorce on 21/10/2015. These facts were not disclosed by the present applicant in the present civil application.

10. Considering these facts and subsequent developments, we are of the opinion that, the applicant has failed and neglected to made out any case for allowing this application, and for suppression of true facts, we are imposing cost of Rs.25000/- on the applicant.

11. Hence, the following order:

- a) Civil application stands dismissed.
- b) The applicant to pay cost of Rs.25000/- to the respondent within Eight weeks from today.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)
