

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11686 OF 2018**

Anju Santosh Gupta ... Petitioner
V/s.
Santosh Kumar Gupta and Anr. ... Respondents

Mr. Rakesh Mishra for the Petitioner.
None for the Respondents.

**CORAM : SMT. SADHANA S. JADHAV, J
DATED : 26th June, 2019.**

P.C. :

1. None appears for the respondents. On 12th June, 2019 none appeared for the respondents. It appears from the record that the *ex-parte* decree of divorce was passed against the present petitioner. The petitioner had then filed an appeal before District Court at Thane. However, there was delay of 25 days. The learned District Judge, Thane by an order dated 23rd December, 2017, rejected the application seeking condonation of delay by resorting to the provisions of Order IX of Code of Civil Procedure. The learned Judge has observed that petitioner had not availed of the opportunity to file the application seeking relief of setting aside the *ex-parte* decree.
2. However, it appears from the record that in fact, the

petitioner had filed the application seeking setting aside of *ex-parte* decree which was rejected on 20th July, 2016 and only thereafter, the petitioner had approached the District Court with an appeal.

3. It is necessary to consider the facts of the case and especially in matrimonial cases, it would not be appropriate for the Court to take pedantic approach for rejecting application seeking condonation of delay of 25 days. According to the learned Judge date of passing of *ex-parte* judgment and decree and the application seeking condonation of delay there is period of 3^{1/2} years which is lost. However, the learned Court has not considered filing of an application seeking setting aside the *ex-parte* decree. The learned Judge had also observed that the petitioner had not taken steps for getting the certified copy of the order dated 20th July, 2016 and therefore, the application seeking condonation of delay was rejected.

4. Taking into consideration the facts of the case and fact that wife has been abandoned by the respondent without giving appropriate opportunity to her and that she has to look after two children. The learned Judge shall condone the delay of 25 days in the interest of justice and admit the appeal within 4 weeks from the date of receipt of this order.

5. Writ Petition is disposed of.

(SMT. SADHANA S. JADHAV, J)