

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

CRIMINAL WRIT PETITION NO. 5223 OF 2018

Dr. Alok Shah

...Petitioner

Versus

Dr. Rupa Umapada Sinha & Ors.

...Respondents

Mr. J.S. Kapre for petitioner.

Mr. Rupesh Gadekar for Respondent No. 1 and 2.

Mrs. G.P. Mulekar, APP for Respondent/State.

CORAM : S. S. SHINDE, J

DATE : 23rd July 2019

P.C.

1. Being aggrieved by the order dated 11.09.2018 passed by the learned Sessions Judge, at Pune, thereby rejecting the prayer of the petitioner to condone the delay of 861 days this petition is filed.

2. Learned counsel appearing for the petitioner submits that, at the relevant time petitioner was residing of Mysoor (Karnataka State), therefore, he was not aware about exparte decree passed in Criminal Misc. Application No. 1016/2011 on 25.04.2013. He invites attention of this Court to the grounds taken in the petition and submits that, petition deserves to be allowed. On instructions he submits that, petitioner is ready to deposit Rs. 5,00,000/- within three months towards part payment of arrears of maintenance, however, without prejudice to the contentions of parties.

3. On the other hand learned counsel appearing for respondents invites attention of this Court to the various documents placed on record and submits that as a matter of fact, the petitioner had knowledge about pendency of the proceedings initiated by the respondent wife. He was attending other proceedings which are instituted by the wife. He invites attention of this Court to the averments in reply and submits that petition may be rejected. He submits that, inordinate delay of 861 days has not been properly explained and therefore, petition may be rejected. He submits that, petitioner has not deposited Rs. 23,50,000/- towards arrears of maintenance.

4 Upon hearing learned counsel appearing for petitioner and learned counsel appearing for respondents and upon perusal of grounds taken in the writ petition as well as reply filed by the respondent, this Court is of the opinion that, the right of the petitioner to contest the appeal before the concerned Court cannot be taken away on technical ground of delay in filing an appeal. However, respondent can be compensated by imposing cost to petitioner. In that view of the matter and keeping in view the grounds taken in the petition, this Court is of the opinion that the petition deserves to be allowed, however, subject to depositing cost of Rs. 1,00,000/- by the petitioner in the Registry of the Sessions Court, Pune within three weeks from today. The petitioner shall also deposit Rs. 5,00,000/- towards maintenance within three months from today. The Respondent No. 1 is permitted to withdraw the

aforesaid amount from the concerned Registry unconditionally.

5. Subject to compliance of directions contained in Para 4 hereinabove, the petition is allowed in terms of prayer clause b & c. Delay in filing appeal before the Sessions Court, Pune, is condoned. Proceedings before the Sessions Court, Pune is restored to its original file.
6. Parties to act upon an authenticated copy of this order.

[S. S. SHINDE , J]