

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.6402/2019**

**NAGIN @ NAGRAJ LALCHAND  
DHANRESHA & ORS.**

**.... PETITIONERS**

**VERSUS**

**PURNIMA NAGIN DHANRESHA & ANR. .... RESPONDENTS**

**.....**

Mr.Rajendra Singh Saluja i/b Mehul A. Rathod, for the Petitioners.

Mr.Rimpal Trivedi, Advocate for respondent no.1.

Mr.R.M.Pethe, APP for State.

**CORAM : A. M. BADAR, J.**

**DATE: 7TH FEBRUARY 2020.**

**ORAL JUDGMENT:**

1. Heard. Rule. Heard finally.

2. Order rejecting application for condonation of delay of 40 days in preferring an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005

(the 'D.V.Act' for brevity) by the original respondents, is impugned in this petition.

3. Petitioners/original respondents suffered an order under Section 23 of the D.V.Act whereby petitioner no.1/husband is directed to pay interim maintenance at the rate of Rs.25,000/- p.m. so also rent of Rs.10,000/- p.m. In addition all original respondents came to be injuncted from committing domestic violence against original applicant/aggrieved person.

4. Delay of 40 days in preferring statutory appeal was sought to be justified on account of weak financial position of petitioners, petitioner no.1/husband being a senior citizen suffering from multiple permanent ailments and his son being the only person who is managing the shop.

5. Though by filing reply, application for condonation of delay came to be resisted, in paragraph 5 of the reply, it

is stated that the diseases suffered by husband are suffered by most of people due to lifestyle and such diseases are not making him immobile.

6. Learned Additional Sessions Judge by impugned order rejected the application for condonation of delay of 40 days in preferring statutory appeal by turning down all contentions.

7. In my considered opinion, the impugned order can not be sustained and the delay ought to have been condoned by the learned Additional Sessions Judge. Undisputedly, as observed by the learned Additional Sessions Judge, appeal under Section 29 of the D.V. Act filed by the wife was being entertained by the said Court. That appeal is undisputedly challenging the very same order. Impugned order is principally directed against the husband and he is directed to pay maintenance as well as rent. Other original respondents were only injuncted from committing domestic violence.

Ailments of husband are not disputed in reply but rather it is averred that those ailments are general ailments suffered by senior citizens due to lifestyle.

8. Principles for condonation of delay are enumerated by the Hon'ble Supreme Court in the matter of **Collector Land Acquisition, Anant Nag & Another Versus Mst.Katiji & Ors., 1987 AIR 1353** and those are thus,

- i) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- ii) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- iii) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
- iv) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side can not claim to have vested right in

injustice being done because of a non deliberate delay.

v) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

vi) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

9. In the light of foregoing discussion, I see no merit in submission of the learned counsel for the aggrieved person that the impugned order is not suffering from any perversity or illegality. On the contrary, when the learned Additional Sessions Judge himself found that similar appeal challenging impugned order at the instance of the wife is pending, it ought to have condoned the delay by considering averments in the reply which is not disputing ailments of the husband. Therefore, following order.

### **ORDER**

i) The Petition is allowed by quashing the impugned order

refusing condonation of delay.

ii) Application for condonation of delay is allowed.

iii) Learned trial court is directed to proceed further in the appeal according to law.

**(A. M. BADAR, J.)**