

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAO) NO. 278 OF 2020
IN FAMILY COURT APPEAL NO. _____/2020

Smt. Poonam w/o Bhupesh Dahat

Vs.

Dr. Bhupesh s/o Mohanrao Dahat

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P.A. Abhyankar, Advocate for applicant.

Mr. V.D. Awchat, Advocate for the non applicant.

**CORAM : V.M. DESHPANDE AND
S.M. MODAK, JJ.**

DATED : FEBRUARY 17, 2020.

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 113 days in filing the appeal before this Court under Section 19 the Family Courts Act, 1984 to challenge the judgment and decree dated 27.08.2019 passed by learned Judge of the Family Court No.4, Nagpur in Petition No.A-604/2017.

Heard Mr. P.A. Abhyankar, learned counsel for the applicant and Mr. V.D. Awchat, learned counsel for the non applicant. With the assistance of both learned counsel, we have gone through the pleadings to support or to oppose this application of condonation of delay and also heard them in extenso.

Non-applicant/husband has filed petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights against applicant/wife and the said petition was allowed by the learned Judge of the Family Court No.4, Nagpur on 27.08.2019. There is no quarrel that the said order dated 27.08.2019 was in the nature of ex parte decree inasmuch as wife was not before the Court.

The submission which is advanced before this Court is that there was no attempt of whatsoever nature on the part of the husband to serve the wife through process of Court. Even this is not disputed at all by the learned counsel for the husband. Right from the beginning attempts were made to serve the wife by registered post acknowledgment due. The learned counsel for the husband submitted that if the reply filed on behalf of the husband in the domestic violence proceedings filed on behalf of the wife before the learned Magistrate is seen then it is clear that the wife was having knowledge of pendency of the proceedings. Be that as it may, the appeal under Section 19 of the Family Courts Act is a substantive appeal. This submission as sought to be made by Mr.Awachat, learned counsel for husband can very well be appreciated if the application was under Order IX Rule 13 of the Code of Civil Procedure.

After hearing the both the learned counsel, we are of the view that since initially no attempts were made on the part of the husband to serve the wife through process of Court and only the attempts were made to serve by registered post acknowledgment due, an opportunity can be granted to the applicant to question the correctness of the decree before this Court. Consequently, we allow this application, the delay of 113 days is hereby condoned. **The Registry is directed to register the appeal.**

The application is disposed of

FAMILY COURT APPEAL (ST) NO. 2132 OF 2020.

Heard Mr. P.A. Abhyankar, learned counsel for the appellant.

Issue notice to the respondent.

Mr. V.D. Awchat, learned counsel waives service of notice on behalf of the respondent.

When this appeal was taken up for consideration, both the learned counsel would submit that the parties can be asked to approach to the learned Mediator so as to find the ways for mediation since both of them are having ray of hope.

Both the learned counsel submit that Mrs. Suhasini Deshpande, Advocate be appointed as a Mediator.

Accordingly, Mrs. Suhasini Deshpande, Advocate is appointed in the matter as a Mediator. She is requested to mediate in between appellant and respondent.

Both the parties submit that they will appear before the learned Mediator on 28.02.2020 at 02:00 p.m. in the Mediation Centre, Bombay High Court, Bench at Nagpur.

Both the parties submit that they will extend full cooperation to the learned Mediator.

Learned Mediator is requested to submit her report of mediation within a period of four week from the first appearance of the parties.

JUDGE

JUDGE