

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO.2438 OF 2020
IN
SA/6025/2020**

Ambadas Poshati Maccha,
Age 41 years, occupation Tailoring,
R/o. H. No.78, Premdan Hudco,
Taluka and District Ahmednagar.

**...Applicant
(Original Respondent)**

VERSUS

Sau. Gita Ambadas Maccha,
Age 38 years, Occupation Nil,
R/o. C/o. Gangaram Laxman Fula,
1027, Parnaik Galli, Sarjapura,
Taluka and District Ahmednagar.

**...Respondent
(Original Petitioner)**

.....
Advocate for Applicant : Mr. G. D. Jain
Advocate for Respondent : Mr. A. D. Aghav
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
03-02-2021**

**Date of Pronouncing The Order :
16-02-2021**

ORDER :

1. Present application has been filed for getting delay of 381 days condoned in filing second appeal.

2. Present applicant is the original respondent. Present respondent/original petitioner had filed Hindu Marriage Petition No105 of 2015 before 2nd Joint Civil Judge Senior Division, Ahmednagar for divorce on the ground of cruelty. The said petition came to be partly decreed. The decree of divorce was granted and the respondent husband was directed to pay permanent alimony to the petitioner. The said Judgment and decree was passed on 12-04-2016. That Judgment and decree was challenged by original petitioner by filing Regular Civil Appeal No.161 of 2011 before learned District Judge-1, Ahmednagar. The said appeal came to be decreed on 30-10-2018. It came to be partly allowed. Inference has been done only in respect of ground of permanent alimony. Instead of monthly payment of permanent alimony, the respondent husband was directed to pay permanent alimony in lump-sum of Rs.10 Lakh within a period of two months. The present applicant intends to challenge the said Judgment and decree, however as aforesaid, there is delay of 381 days. Hence, present application.

3. Heard learned Advocate Mr. G. D. Jain for applicant and learned Advocate Mr. A. D. Aghav for respondent.

4. It has been vehemently submitted on behalf of the applicant that the modification in the order by the First Appellate Court is perverse. The applicant is admittedly tailor by profession, yet he has been directed to pay lump-sum amount of Rs.10 lakh. The delay is caused due to receiving the certified copies of the relevant documents and also on the ground of ill health of the applicant. The application under Section 5 of the Indian Limitation Act is required to be considered from liberal point of view and, therefore, he relied on the decision in *Collector, Land Acquisition, Anantnag v. Katiji*, reported in AIR 1987 SC 1353.

5. The learned Advocate appearing for the respondent strongly opposed the application and submitted that the applicant has not produced any such document showing that he is suffering from any diseases. Absolutely no sufficient ground has been shown and, therefore, he does not deserve any sympathy. Unless the sufficient and reasonable cause is shown, this Court cannot interfere with the orders those have been passed by the competent lower Courts.

6. We cannot see the merits of the case at this stage but will have to restrict ourselves whether the applicant has shown any

reasonable ground or not. There appears to be an undisputed fact that the respondent is a tailor by profession. It appears that he had not challenged the Judgment and decree passed in Hindu Marriage Petition No.105 of 2015, but the petitioner herself had filed the said appeal. The only point that was raised before the First Appellate Court was the grant of permanent alimony in lump-sum. Now the applicant says that he is suffering from various diseases. He has not produced any document on record but then he states that he had no money to pay any amount and, therefore, he had approached High Court Legal Services Sub-Committee, Aurangabad for legal aid. Perusal of the record does not show the order of appointment of the learned Advocate and it is not clear as to whether the High Court Legal Services Sub-Committee, Aurangabad has granted legal aid to present applicant or not, but then the said fact is not even disputed. A liberal approach is required to be taken taking into consideration the duration of the delay. No doubt, the inconvenience that is caused to the other side is equally required to be compensated in terms of money though the applicant says that he had approached the High Court Legal Services Sub-Committee, Aurangabad. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) The delay caused in filing Second Appeal is hereby condoned subject to deposit of cost of Rs.5000/- (five thousand) to be deposited within 15 days from the date of this order.
- 3) After the amount is deposited, Registry to verify and register the second appeal.
- 4) Respondent is permitted to withdraw the said amount.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-