

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO.14193 OF 2015
IN SAST/17073/2015**

SITARAM RANAJI TALE
VERSUS
SHANKUNTALA SITARAM TALE

...
Advocate for Applicant : Mr. Chondhekar Balaji S.
Advocate for Respondent : Mr.Jadhav Prashant B.
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 02-08-2021.

ORDER :

1. The present application has been filed for getting delay of 1269 days condoned in filing second appeal.
2. The present applicant is the original petitioner/husband who had filed Hindu Marriage Petition No.33 of 2001 before Civil Judge, Senior Division, Hingoli against the respondent wife for divorce on the ground of cruelty and desertion. The said petition came to be allowed on 07-01-2004 and the marriage between the petitioner and the respondent stood dissolved by the said decree. The wife challenged the said decree by filing Regular Civil Appeal No.10 of 2004 before the District Court, Hingoli which was heard by learned District Judge-1, Hingoli and

it came to be allowed on 26-09-2011, thereby setting aside the decree of divorce passed by the learned Trial Judge. Now the original petitioner/husband intends to file second appeal, however, there is delay of 1269 days.

3. Heard learned Advocate Mr. Chondhekar B.S. for applicant and learned Advocate Mr. Jadhav P. B. for respondent. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.

4. It is to be noted that the applicant is stating that he was under the bonafide impression that since the appeal is pending before the District Court and he was serving at various places could not attend the dates in the Court, however, he got the knowledge about decree passed against him in the appeal in the first week of February of 2015. There was lack of communication between him and his Advocate. It is stated that he being a senior citizen had no knowledge about the law and, therefore, there is delay.

5. At the outset, it is to be noted that when he had filed the Hindu Marriage Petition he had given his age as 55 years. It has come on record that he was serving in MSRTC. In this application,

he has intentionally not given what was the date of his retirement, but normally it should be on the completion of his age of 58 years. That means, when the matter was still before the Civil Judge, Senior Division, he would have retired because it took almost two years two months for the learned Civil Judge Senior Division, Hingoli to decide the Hindu Marriage Petition. Even if for the sake of arguments it is stated that he would have retired during the pendency of his appeal, yet it could not have stretch beyond 26-09-2011. It took about seven years seven months and twenty days for the Appellate Court to decide the appeal. His age in the title of the appeal is same as on the original petition. So, there is wrong mention of the age of the present applicant in the title of the appeal. Here, now in this application he has given his age as 69 years. So, if he would have retired after the completion of his age of 58 years, he would have retired around 2004 or 2005, that is within one or two year after the appeal was filed. Any way, certainly he was not in service on the date of the decision by the First Appellate Court. Therefore, the reasons he has tried to give that at the relevant time he was serving at various places and could not attend the dates in the Court, is unacceptable. Vague reason has been given and, therefore, taking into consideration the huge delay of 1269 days and since it is

unbelievable that there was communication gap between him and the Advocate, he deserves no sympathy. Liberal approach cannot be taken under the facts and circumstances of the case for condoning the delay. Application, therefore, stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-