

Item No.8

THE HON'BLE THE CHIEF JUSTICE HIMA KOHLI
AND
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

I.A.No.2 OF 2021 IN/AND F.C.A.No.43 OF 2021

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Hima Kohli)*

1. The matter is listed in the category of dismissal, as none had appeared for the appellant on the last date of hearing. Today, learned counsel appears for the appellant and tenders an apology for his absence on the last date of hearing.
2. I.A.No.2 of 2021 has been moved by the appellant/wife praying *inter alia* for condonation of delay of 571 days in filing the accompanying appeal directed against the judgment and decree dated 04.06.2018, passed by the learned Family Court in F.C.O.P.No.661 of 2013 filed by the respondent/husband, granting a decree of divorce in his favour, on the ground of cruelty.
3. We may refer to the averments made in the affidavit supporting the application. The appellant has sought to explain her inaction in approaching the court on time by stating that she was suffering from financial problems and that she had undergone mental depression for which she had to undergo extensive treatment from several doctors, both, in Hyderabad and in Kerala. Claiming that she had recovered sometime in the end of February, 2021, the appellant goes on to state that she had applied for a certified copy of the impugned judgment

on 04.03.2021 and thereafter had taken steps to file the present appeal. As for her medical records, it has been averred in para 7 that all the medical records regarding her treatment had got damaged on account of the floods that took place in Hyderabad in the year 2020 due to which she cannot produce any medical proof before this court.

4. We have serious reservations as to the flimsy explanation sought to be offered by the appellant for seeking condonation of delay of a period spread over 571 days in filing the accompanying appeal. Except for making a bald and ambiguous statement in the application about her ill-health which she states stretched over three years, not a scrap of paper has been filed by the appellant, to substantiate the said submission. This court is also sceptical about the explanation offered by the appellant that she had kept all her records at her parent's house in Hyderabad which had got damaged during the floods that took place in the year 2020. To prove her *bona fides*, the appellant could have easily got her medical records reconstructed. But quite apparently, no such effort has been made by her.

5. The past conduct of the appellant during the course of the proceedings before the Family Court is also significant. The absence of diligence shown by the appellant in defending the divorce petition filed by the respondent has been adversely commented upon in the impugned judgment where, the learned Family Court has noted that the divorce petition was filed by the respondent/husband in the year

2013. Though his evidence was closed, the appellant had failed to appear before the court. On 19.02.2018, she had filed an affidavit by way of evidence but had absented herself thereafter. However, this did not prevent her from filing a series of applications in the said proceedings. The learned Family Court has further noted that the appellant was directed to appear before the court for recording her cross-examination on 04.04.2018, but she failed to turn up. Further, several opportunities were granted to her on 09.04.2018, 12.04.2018, 13.04.2018 and 23.04.2018, but the appellant and her counsel failed to appear on all these dates, for recording her cross-examination. Even after imposition of costs on her, the appellant did not lead any evidence.

6. In view of the absence of any documents to substantiate the averments made by the appellant in the application, we are not convinced that either just, or sufficient cause has been shown by her for this court to condone a prolonged delay of 571 days in filing the accompanying appeal. Despite the above position, we did enquire from learned counsel for the appellant as to whether the appellant can reconstruct her medical records and file them for our perusal. Learned counsel states that his client is not in a position to reconstruct the medical records by approaching her treating doctors, which is rather strange and only confirms our suspicion that the entire story narrated in the present application, is false.

7. We are therefore not satisfied by the explanation offered by the appellant for condoning the delay in filing the appeal and have no option but to dismiss the present application. The application is rejected. As a result thereof, the accompanying appeal stands dismissed along with the pending applications, if any.

HIMA KOHLI, CJ

B.VIJAYSEN REDDY, J

01.07.2021

Lrkm/vs