

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.44 OF 2022

1. Ratnamala w/o Madhukar Mahajan
2. Shiva @ Shivkumar s/o Madhukar Mahajan
3. Jayshri w/o Shiva @ Shivkumar Mahajan
4. Shubham s/o Shiva @ Shivkumar Mahajan ... Petitioners

Versus

1. Geeta w/o Pandurang Mahajan
2. Mansi d/o Pandurang Mahajan
3. Ayush s/o Pandurang Mahajan ... Respondents

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Mr. S. B. Ghatol Patil, Advocate for petitioners.

Mr. H. I. Pathan, Advocate for respondent Nos.1 and 3.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09.06.2022

ORDER :-

. Present petition has been filed invoking the Constitutional powers of this Court under Article 226 and 227 of the Constitution of India with inherent powers of this Court under Section 482 of the Code of Criminal Procedure to challenge the judgment and order dated 26.11.2021 passed by the learned Additional Sessions Judge, Nanded in Other Miscellaneous Criminal Application No.37 of 2021, thereby rejecting the application for condonation of delay to challenge the order dated 06.06.2018 in Miscellaneous Criminal Application (PWDV Act) No.161

of 2016 passed by learned Judicial Magistrate First Class, 3rd Court, Nanded to prefer an appeal.

2. Heard learned Advocate Mr. S. B. Ghatol Patil for the petitioners and learned Advocate Mr. H. I. Pathan for respondent Nos.1 and 3.

3. It is not in dispute that the present respondent Nos.1 to 3 had filed the said application under Protection of Women from Domestic Violence Act (for short "PWDV Act) before the learned Judicial Magistrate First Class, Court No.3, Nanded under Section 12 of the PWDV Act for various reliefs under the said Act. It is also not in dispute that the original applicant No.1 got married to one Pandurang Madhukar Mahajan i.e. the son of original respondent Nos.1 and 2 on 04.06.1998 and he expired on 27.08.2015. The aggrieved persons had come with the case that after death of Pandurang, his parents, brother, brother's wife and son had subjected the original applicants to domestic violence. The learned Magistrate had issued notice/summons of the said application to the respondents. The said notice was duly served, however respondent No.5 failed to appear and respondent Nos.1 to 4 appeared but did not file their say and, therefore, matter proceeded in their absence. It came to be partly allowed. Maintenance at the rate of Rs.10,000/- per month was granted to original applicant No.1 under

Section 20 of the PWDV Act. Prohibitory orders have been issued, so also compensation of Rs.1,00,000/- has been awarded. The present petitioners intended to file appeal and, therefore, filed the application i.e. Miscellaneous Criminal Application No.37 of 2021 under Section 5 of the Limitation Act for condoning the delay of 3 years and 23 days. After hearing both sides, the learned Additional Sessions Judge, Nanded rejected the said application on 26.11.2021, which is the order under challenge in this writ petition.

4. The learned Advocate appearing for the petitioners submitted that the learned Additional Sessions Judge has not considered the reasons given by the petitioners for the delay. The delay was not intentional. Original respondent No.1 i.e. the father-in-law was looking after the matter and he expired during the pendency. Further due to Covid-19 pandemic situation, the physical hearing of the Courts were hampered and, therefore, the petitioners could not approach the Court as well as contact their Advocate. Now, the petitioners came to know about the order when the said order has been put to execution by PWDVA Execution No.24 of 2019 before the learned Judicial Magistrate First Class, (2nd Court), Nanded. A liberal approach ought to have been taken by the learned Additional Sessions Judge. He relied on the decision in *Sonerao Sadashivrao Patil and another Vs. Godawaribai w/o*

Laxmansingh Gahirewar and others, [1999 (2) Mh.L.J. 272], wherein it has been held that :-

“The primary function of a Court is to adjudicate the disputes between the contesting parties and to advance substantial justice. The rules of limitation are not made to harm the valuable rights of the parties. The discretion is given to the Court to condone delay and admit the appeal in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. If the spirit behind the empowerment of discretionary power on the Court is taken into consideration, it is beyond doubt clear that the Court is required to adopt liberal approach in the matter of interpretation of the phrase “sufficient cause”. This concept is adequately elastic to enable the Court to apply law in meaningful manner. The requirement of explanation of every day’s delay does not mean that a pedantic approach should be taken. The Courts are required to adopt rational common sense approach.”

5. Per contra, the learned Advocate appearing for respondent Nos.1 and 3 supported the reasons given by the learned Additional Sessions Judge and submitted that when no reasonable ground has been shown for condoning the delay question of taking liberal approach does not arise.

6. At the outset, it is to be noted that original respondent No.1 – Madhukar Haribhau Mahajan i.e. the father-in-law of the original applicant No.1 expired on 03.03.2019. Prior to that on 06.06.2018, already the judgment was delivered by the learned Judicial Magistrate First Class. It cannot be heard that the matter was looked after by Madhukar when it was before Judicial Magistrate First Class. The applicants are not disputing that the summons in respect of Miscellaneous Criminal Application (PWDV Act) No.161 of 2016 was served on them and they had failed to file say. The matter was before the learned Judicial Magistrate First Class for about 1 year 8 months and 6 days. The question, therefore, arises as to why no attempt was made by any of the respondent to appear before the Magistrate and file say and take active part in resisting the said application. Deceased Madhukar was a 70 year old person doing business. Even his wife Ratnamala is stated to be a business woman. Their son Shiva @ Shivkumar was then a 50 year old person in 2016 doing business. When father is old, then definitely the son, who is much younger, can look after the litigation. It appears that Shivkumar has not given reasonable ground as to why he was not looking after the matter when it was before the learned Magistrate. Even after its decision, Madhukar was alive till 03.03.2019. It is then stated that due to pandemic situation of Covid-19,

the physical hearing of the Courts were hampered and applicants – petitioners could not approach the Court to present the appeal in time. The pandemic situation arose after about a year from the death of Madhukar. To be precised, the lock-down was declared on 22.03.2020. Therefore, there should be some reason for not taking any action from the date of death of Madhukar till the pandemic situation started. The application for condonation of delay has been filed on 29.06.2021. When absolutely no reasonable ground has been shown for condoning the delay of 3 years and 23 days, the learned Additional Sessions Judge was justified in rejecting the application.

7. Another fact that has been considered by the learned Additional Sessions Judge that the present petitioners had approached the Civil Court at Nanded for obtaining heirship certificate as legal heirs and successors of Madhukar as well as for preferring a Civil Suit seeking perpetual injunction against respondent No.1 by filing Regular Civil Suit No.95 of 2020, which was presented in the month of February, 2020 and even the application at Exhibit-5 in that suit appears to have been disposed of on 22.01.2021. When the petitioners approached the Civil Court in Nanded, they could have approached the criminal Appellate Court during the said period of 3 years and 23 days. Under such circumstance, the ratio laid down in *Sonerao Patil (Supra)* is not

applicable to the facts of the present case. The petitioners failed to explain the delay and, therefore, no illegality or error can be said to have been committed by the learned Additional Sessions Judge while dismissing the application. No interference is required by invoking either the Constitutional powers or inherent powers of this Court. The writ petition stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

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