

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**84 CIVIL APPLICATION NO.5657 OF 2021
IN FAST/5805/2021 A**

**PRASHANT JOHN LALZARE
VERSUS
VAISHALI PRASHANT LALZARE**

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Advocate for Applicant : Mr. Suraj Bagal H/f
Mr. Gadegaonkar Bharat N.
Advocate for Respondent : Mr. R. N. Chavan h/f.
Mr. Bagdiya Vishal A.
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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 12.12.2022

PER COURT :

Heard rival submissions. The applicant -husband is seeking condonation of delay of 635 days in filing first appeal against the decree passed by learned District Judge -4, Jalna dtd. 21.03.2018 in Spl. Marriage Petition No. 08/2017 filed for divorce by mutual consent.

2. The learned counsel for the applicant placed reliance on the judgment of this Court in Second Appeal No. 40/2009 wherein it is observed that the appeal against the decree of divorce by mutual consent is very much maintainable. On the contrary the learned counsel for the respondent wife strongly opposed the submission on

the ground that such decree can be challenged only by filing writ petition. However, this aspect needs to be considered at the time of hearing the appeal on merit.

3. According to the applicant the delay of 635 days has occurred since he was diagnosed with heart problem. The learned counsel for the respondent -wife strongly opposed this aspect and submitted that during the intervening period the respondent -wife has re-married on 25.10.2020. However considering the statutory right of the applicant, the delay of 635 days stands condoned.

4. The appeal be placed for admission after removal of office objections, if any.

5. The application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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shp/-