

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.417 OF 2021

1. Shaikh Ashfaq s/o Iqbal Ahmed
 2. Iqbal Ahmed
 3. Saeeda Sultana w/o Iqbal Ahmed
 4. Nilofar Nahid w/o Muddassir Ahmedm
 5. Mudassir Ahmed
 6. Ejaz Ahmed s/o Iqbal Ahmed
- ... Petitioners

Versus

1. Junaira Fatema w/o Ashfaq Ahmed
 2. Aayesha Maherin d/o Ashfaq Ahmed
- ... Respondents

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Mr. Y. D. Kale, Advocate for petitioners.

Mr. Shaikh Samir Ahmed Saifuddin, Advocate for respondent Nos.1 & 2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08.06.2022

ORDER :-

. Present writ petition has been filed by the original respondents to challenge the order dated 04.03.2021 passed in Criminal Miscellaneous Application No.336 of 2019 by the learned Additional Sessions Judge, Aurangabad, thereby the said application for getting the delay of 2 years and 7 months caused in filing the appeal has been refused to be condoned.

2. The facts giving rise to the present writ petition are that the present respondents had filed application under Section 12 of the Protection of Women from Domestic Violence Act (for short “PWDV Act”) vide PWDV Application No.445 of 2016 before the learned Judicial Magistrate First Class, Court No.12, Aurangabad for various reliefs. It came to be partly allowed by the learned Magistrate on 02.03.2017. The present writ petitioners intended to file appeal challenging the said order passed by the learned Magistrate, however, since there was delay of 2 years and 7 months, they had filed Criminal Miscellaneous Application No.336 of 2019, however, it has been rejected on the ground that no reasonable cause has been shown for not filing the appeal within limitation.

3. Heard learned Advocate Mr. Y. D. Kale for the petitioners and learned Advocate Mr. Shaikh Samir Ahmed Saifuddin for respondent Nos.1 and 2.

4. It has been vehemently submitted on behalf of the petitioners that the learned Additional Sessions Judge failed to consider that the applicants though had received the copy of the judgment and order passed by the learned Magistrate which was in Marathi, they could not understand it. They had gone to their Advocate to understand the order

passed against them, however, they were misled by the Advocate that it is not necessary for them to bother. In fact, the appellants are not conversant with Marathi and, therefore, believed in words of their Advocate. Prior to the application, a few days ago, they received a notice from the Court about the execution of the order passed by the learned Magistrate. In fact, the appellants had received the notice of the Court wherein the respondent No.1 – wife had challenged the order of the trial Court and it was thought by the appellants that the matter has gone against the respondents. He had not preferred any appeal. He has paid maintenance up to Rs.99,500/- to the respondents, but now in the execution more amount has been demanded and warrant has been issued. The petitioner – appellant intended to challenge the said order. The learned Additional Sessions Judge has not considered the basic reason put forward by the applicants and wrongly rejected the application. The liberal approach has not been taken which is in fact expected. Reliance has been placed on the decision of the Allahabad High Court in *Balpreet Singh Vs. State of U.P. and another, [2019 (1) ALL. Crl. Rulings 197]* wherein it has been observed that delay in filing an appeal or revision in cases under Protection of Women from Domestic Violence Act, 2005 should ordinarily be condoned unless the facts are so clinching that even a man of ordinary prudence may not accept the

explanation offered for condoning the delay. Court cannot doubt the *bona fide* of the revisionist. Further, when the parties are raising matrimonial dispute, then endeavour should be to settle the dispute amicably and, therefore, such application be normally allowed. He, therefore, prayed for allowing the writ petition, setting aside the order passed in the revision and condoning the delay in filing the appeal before the Sessions Court.

5. Per contra, the learned Advocate appearing for the respondents strongly objected the petition and he relied on the affidavit-in-reply filed by respondent Nos.1. He also submitted that being aggrieved by the order passed by the learned Magistrate, she had filed PWDV Appeal No.68 of 2017 on 23.03.2017 itself and that appeal came to be dismissed by the learned Additional Sessions Judge on 10.04.2018. In the said appeal, notice was served on the present petitioners and they were represented by Advocate Mr. M. B. Patni. He has made available the judgment in PWDV Appeal No.68 of 2017. That appeal was for enhancement in the maintenance and it came to be rejected by the learned Additional Sessions Judge on 10.04.2018. This act would show that the writ petitioners were very much aware about the proceedings those were filed and the decision by the magistrate, yet they had not taken any steps to challenge the order passed by the learned Magistrate.

There was total negligence on the part of the petitioners and, therefore, such negligent party cannot claim discretionary relief.

6. The application that was filed i.e. Criminal Miscellaneous Application No.336 of 2019 before the learned Additional Sessions Judge was under Section 5 of the Limitation Act. No doubt, the law is well settled on the point that the Courts should be liberal in considering an application for condonation of delay, however, at the same time, the rider is that the Courts cannot give reliefs to a negligent party. Due to some reasonable ground if the appeal could not be filed before the appellate authority within the stipulated period of limitation, then taking into consideration that reason, the delay can be condoned. Here, in this case, the petitioners themselves have come with the case that they got the knowledge about the decision by the learned Magistrate immediately after its pronouncement and, in fact, if the judgment passed by the learned Magistrate is concerned, then it specifically states that authenticated copy of the judgment be provided to both clients under Section 24 of the PWDV Act. It will have to be presumed that such compliance would have been made by the learned trial Judge. The petitioners are not saying that they had not received the copy of the judgment free of cost. It is then stated that though they received the copy since it was in Marathi, they could not understand the tenor. They

say that they had gone to the Advocate to know what has been held in the said case against them. According to them, the Advocate has not made them understood it properly and told that they should not worry by saying that only maintenance is granted. In fact, when such understanding was given that maintenance has been granted to the original aggrieved persons, then the petitioners could have taken a call as to whether they want to challenge the order of maintenance itself. Another opportunity was available to them when the aggrieved persons challenged the said order in PWDV Appeal No.68 of 2017. The present petitioners were duly served in that matter in 2017 and then the said PWDV Appeal No.68 of 2017 came to be dismissed on 10.04.2018. When the notice in that matter would have been received by the petitioners, definitely, they ought to have made inquiry with their Advocate as to for what purpose the appeal has been filed. There was no hurdle for them to ask the Advocate as to whether still they can challenge the impugned order by the Magistrate. Rather the petitioners allowed that the petition also to be decided on its merits. The present petitioners were represented by Advocate and he had made submissions before the said Court before the dismissal of that appeal. In spite of the dismissal of that appeal on 10.04.2018, no further steps were taken and the application for condonation of delay came to be filed on 04.11.2019.

There is absolutely no explanation, much less reasonable ground has been shown for condoning the delay. Whatever reason has been stated is not convincing and appealing. Merely because the applicant No.1 has deposited certain amount towards maintenance, that doesn't mean that his liability is over. The decision in *Balpreet Singh (Supra)* will not be applicable here as the facts are so clinching that a man of ordinary prudence cannot accept the explanation that the concerned Advocate had asked them not to worry even after saying that maintenance has been awarded against the petitioner No.1. As the reasonable ground was not shown, the learned Additional Sessions Judge was justified in rejecting the application. No question arises for invoking the constitutional powers of this Court for setting aside the well reasoned order. The writ petition, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

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