

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

934 CRIMINAL REVISION APPLICATION NO.274 OF 2019

DR. SYED JAVED S/O. SYED MAHEMOOD AND OTHERS
VERSUS
DR. MASSARAT JAHAN W/O. SYED JAVED

Advocate for Applicants : Shri Ameya N. Sabnis
Advocate for Respondent : Shri M.S. Choudhary

CORAM : M.G.SEWLIKAR, J.

DATE: 26th February, 2022

PER COURT:-

1. Heard.
2. This is an application for condonation of delay of 112 days.
3. The respondent-wife had preferred an application bearing No.PWDVA 767 of 2011 under the Protection of Women from Domestic Violence Act (hereinafter referred to as 'the DV Act') for various reliefs. It was partly allowed by the learned Judicial Magistrate First Class (JMFC), Aurangabad by his Judgment and order dated 3rd November, 2018. The applicants preferred appeal before the learned Sessions Court. However, delay of 112 days was caused in preferring the appeal. The learned Additional Sessions Judge, Aurangabad, rejected the application for condonation of delay. Hence, this revision.

4. Shri A.N.Sabnis, learned counsel for the applicants submits that the applicants had appeared in the proceedings under the DV Act initiated by the wife (respondent herein). He submits that the applicants had filed say in the proceedings under the DV Act before the learned JMFC. He submits that the applicants had engaged Advocate in the trial Court. However, the Advocate of the applicants did not appear in the matter and did not cross-examine the witnesses. The Advocate did not inform the applicants that the applicants would be required to lead their evidence. In these circumstances, learned counsel for the applicants submits that the proceedings remained uncontested. As a result, application for maintenance was allowed. He submits that the learned Family Court had rejected the application of wife for maintenance but awarded maintenance to the daughter. All these facts were not brought to the notice of the learned JMFC. He submits that he is ready to deposit half of the arrears of maintenance as calculated by Shri Choudhari, learned counsel for the respondent-wife.

5. Shri M.S.Choudhari, learned counsel for respondent-wife submits that the applicants knowingly did not contest the application. He further submits that he has no objection for condonation of delay, if the applicants deposit half of the arrears

of maintenance. He further submits that the amount of entire arrears comes to Rs.8,00,000/-.

6. Shri Sabnis, learned counsel for the applicants submits that he is ready to deposit Rs.4,00,000/- towards the arrears of maintenance.

7. On perusal of the papers annexed with the application, it appears that respondent-wife was not cross-examined by the applicant No.1-husband. Applicant No.1-husband did not also lead his evidence. This shows that applicant No.1-husband did not get opportunity to lead his evidence and put up his case. In this view of the matter, the applicants have made out sufficient cause for condonation of delay. In view of this, following order is passed :-

ORDER

- (i) Application is allowed in terms of prayer clause-'B'.
- (ii) The impugned order dated 17th August, 2019, passed by the learned Additional Sessions Judge, Aurangabad, in Criminal M.A.No.117 of 2019, is quashed and set aside.
- (iii) Delay of 112 days caused in filing appeal is condoned subject to applicants depositing Rs.4,00,000/- either in this Court or in the trial Court within four weeks.

(iv) If amount of Rs.4,00,000/- is not deposited within four weeks, application shall stand dismissed without further reference to this Court.

(v) Respondent-wife is permitted to withdraw the said amount, if deposited in this Court or in the trial Court.

(vi) On depositing the aforesaid amount, the trial Court to dispose of the appeal within four months from the date of receipt of writ of this order.

(vii) All the points are kept open.

(M.G.SEWLIKAR)
JUDGE

SPT