

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4350 OF 2021

Parashram Vasant Parit

...Petitioner

Vs.

Aruna Parashram Parit & Ors.

...Respondents

NILAM
SANTOSH
KAMBLE

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by NILAM
SANTOSH
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Mr.Chetan Patil i/b Mr.Mandar G. Bagkar for the Petitioner.
None for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 11 AUGUST 2022

P.C.

. The challenge in this Petition, is to the judgment and order dated 5 February 2021 passed by the learned Additional Sessions Judge at Gadhinglaj, in Criminal Revision Application No.6 of 2020. By the impugned judgment the Revision Application has been dismissed, thereby confirming order dated 9 January 2020 passed by the learned J.M.F.C., Ajara, District-Kolhapur (below Exhibit-1) in Criminal Miscellaneous Application No.5 of 2018. The net result is that the Criminal application filed by the Respondent-wife seeking maintenance under Section 125 of the Cr.P.C. stands restored to file.

2. I have heard the learned counsel for the Petitioner. None for the Respondents. Perused record.

3. The Respondent had initially filed an Application being Criminal Miscellaneous Application No.39 of 2012 seeking maintenance for herself and the minor child. That Application was dismissed for want of prosecution on 17 February 2014.

4. The Respondent filed Criminal Miscellaneous Application No.31 of 2015 again seeking maintenance for herself and the minor child. The learned Magistrate passed the following order on 27 March 2017.

“It appears that, the applicant files unnecessary application for prolonging the proceeding of present criminal Misc. application. Hence, ample opportunity given to the applicant then also applicant not filed affidavit in chief on matter is kept for hearing. Hence, no purpose would be served by keeping the matter on board without effective steps. Hence application is dismissed in default for want of proceedings.”

5. The Respondent filed Criminal Miscellaneous Application No.5 of 2018 on 10 January 2018 for recall of the order dated 27 March 2017 and the consequent restoration of the Criminal Miscellaneous Application No.31 of 2015 to file.

6. The Petitioner resisted the Application *inter alia* on the ground that the Respondent is repeatedly filing such

Applications and then has failed to prosecute the Applications diligently.

7. The learned Magistrate by order dated 9 January 2020 allowed the Criminal Miscellaneous Application No.5 of 2018 and Criminal Miscellaneous No.31 of 2015 has been restored to file. The Magistrate also condoned the delay in filing the Application for restoration. Feeling aggrieved the Petitioner challenged the said order before the learned Sessions Judge, where the Revision Application is dismissed. Hence this Petition.

8. The learned counsel for the Petitioner submitted that the Application was not filed within time. According to the learned counsel the limitation would be governed by Article 122 of the Limitation Act which provides for limitation of 30 days. It is submitted that the Application for restoration was filed after a period of 9 months. Secondly, it is submitted that there was no prayer for condonation of delay.

9. The learned counsel strenuously urged that the Respondent has been repeatedly filing Applications for maintenance without prosecuting the same in a diligent manner.

10. I have considered the circumstances and the submissions made. It is true that the earlier Application as well as

Criminal MA No.31 of 2015 came to be dismissed for want of prosecution, as the Respondent had failed to prosecute the same with due diligence. However, the contention that the Application for restoration is governed by Article 122 cannot be accepted. Article 122 provides for limitation to restore a suit or an Application for review or revision which is dismissed for default or for want of prosecution or for failure to pay costs of service charges of process to furnish security. In the present case, the Application for restoration, cannot be regarded as an Application for review of the earlier order.

11. At any rate, a subsequent Application for maintenance on change of circumstances, is not barred, as the necessity of the wife and/or the children for maintenance can change depending upon the circumstances. To put it differently, a claim for maintenance cannot normally be barred by the principles akin to res-judicata. The claim would depend on the necessity of the wife and/or the children for such maintenance.

12. The learned Magistrate has exercised the discretion in condoning the delay and restoring the Application for maintenance. The learned Session Judge has refused to interfere with the same. Thus I do not find any reason to interfere with the same in exercise of the inherent powers under Section 482 of

the Cr.P.C. or the supervisory jurisdiction under Article 227 of the Constitution of India. The Petition is accordingly dismissed.

C.V. BHADANG, J.