

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14346 OF 2016

Mrs. Chandrakala Madhukar Sonje Petitioner
v/s.
Mr. Madhukar Ganpat Sonje Respondent

Mr. Nitin B. Patil i/b. Anthony Michel for the Petitioner.
Mr. Vivek Rane i/b. A.R. Kapadnis for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 07th APRIL, 2022.

P. C. :-

. The Petitioner has sought to challenge the order dated 02/11/2015 whereby the learned District Judge, Malegaon, Dist. Nashik has declined to condone the delay of 16 years and 11 months in filing the Appeal against the judgment and order dated 13/10/1998 in Hindu Marriage Petition No.19/1996.

2. Heard Mr. Nitin Patil, learned counsel for the Petitioner and Mr. Vivek Rane, learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The Respondent – husband had filed a suit for dissolution of marriage on the ground of desertion. The suit was duly contested by the Petitioner herein. The said suit came to be decreed by judgment and decree date 13/10/1998. The Petitioner had not challenged the decree within stipulated period of limitation. The Petitioner subsequently filed an Appeal with delay condonation application which was withdrawn with liberty to file fresh application.

4. In the previous application, the Petitioner had sought to condone the delay on the ground that the Appeal could not be filed in time due to financial constraints. After having withdrawn the first Application, the Petitioner filed a second application for condonation of delay claiming that the Respondent had re-married during subsistence of the first marriage. She has deduced this on the basis of the dates of birth of the children given in the evidence in C.S.No.1671/2007.

5. As noted above, the Respondent-husband had filed a suit for divorce on the ground of desertion. The suit was decree and since the decree the Respondent-husband has remarried and has children from the said wed lock. The Petitioner has now sought to challenge the decree after almost 17 years on the ground that the Petitioner had re-

married during subsistence of the marriage. Knowledge of second marriage is not on the basis of any material facts. Petitioner has deduced this on the basis of the statement relating to age of the children made in subsequent proceedings. Such inordinate delay cannot be condoned on the basis of some inference drawn by the Petitioner, more so, when the very ground raised is otherwise not relevant to decide the dispute. Furthermore, the Respondent-husband having remarried after the divorce decree had attained finality, the right accrued in favour of the second wife and the children from the second marriage cannot be ignored while condoning such inordinate delay.

6. The impugned order does not suffer from illegality or material irregularity leading to miscarriage of justice. Hence, the Petition has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

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