

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO.542/2021
IN
MISC. CIVIL APPLICATION (ST.) NO.9053/2021
IN
CIVIL APPLICATION (F) NO.2878/2014
IN
FIRST APPEAL (ST.) NO.13051/2014 (R.C.NO.257/2016)
 Captain Maheshkumar Anandrao Marathe
 Vs.
 Dr. Arundhati, BHMS, MD w/o. Maheshkumar Marathe

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. Sachin Deshpande, Advocate for applicant.
 Mr. Laxmikant Jaiswal, Advocate for the non-applicant.

CORAM : SANDEEP K. SHINDE AND
MRS.VRUSHALI V. JOSHI,JJ.
DATED : 16/12/2022.

The applicant's Civil Application (F) No.2878 of 2014, seeking condonation of delay caused in filing Family Court Appeal was dismissed in default, on 26th February 2016. Thus, he moved instant application seeking restoration thereof, by condoning delay of five years.

FACTS

2. The petition filed by applicant for grant of divorce was dismissed by the Family Court. Whereafter, he filed Family Court Appeal, along with application for condonation of delay. The said application was dismissed on 26th February, 2016 in default, as his Advocate was not present. Now the applicant seeks restoration of that application, by condoning delay of five years. First ground

urged to condone delay is that, being Defence Personnel and posted on border, he could not take timely steps to seek restoration and another ground, that, his Advocate did not inform him order dismissing delay condonation application and for negligence of the Advocate, client should not be punished. Applicant relied on the judgment of the Hon'ble Supreme Court in the case of ***Rafiq and Another Vs. Munshilal and Another*** reported in ***1981(2) SCC 788***.

3. The learned Counsel appearing for the respondent would argue that delay of five years being inordinate and further no 'sufficient' cause has been shown, application be rejected. He would, argue 'cause' sought to be shown is not only 'insufficient' but factually incorrect. In the sense, though applicant has stated that he was unable to attend the proceeding due to border postings and was not aware of dismissal of application in default, yet evidence shows that the applicant had marked his presence in other proceedings in last five years. Learned counsel has placed details as to applicant's presence from 2016 to 2019, before the Family Court; like, (i) on 11.04.2016 he has verified the written statement, (ii) on 08.06.2016 he verified another application, (iii) on 05.09.2019 and 26.09.2019 he was present before the Family Court for evidence and (iv) on 13.10.2020 he verified and file the Criminal Revision. Thus, according to the respondent, applicant's presence in other proceeding, between him and his wife, the ground taken-up, for seeking condonation of delay was factually incorrect.

4. In any case, applicant is not a layman. He is officer. Except a bare statement that his Advocate did not inform him about dismissal of application, there is nothing more to believe him in the background of above facts. It is unbelievable that applicant would not enquire with Advocate about the status of Family Court Appeal for five years although he instituted proceedings against his wife and deposed therein during last five years on more than one occasion. Thus, for want of sufficient cause the application seeking condonation of delay is dismissed.

(MRS. VRUSHALI V. JOSHI, J.)

(SANDEEP K. SHINDE, J.)

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