

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 8 OF 2022

JYOTI W/O. SOMNATH SHINDE AND OTHERS

VERSUS

SOMNATH BAPURAO SHINDE AND OTHERS

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Advocate for Applicants : Mr. Patil Bipinchandra K

Advocate for Respondents : Mr. Sunil P. Koli h/f Mr. Veer Shrikant T.

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CORAM : KISHORE C. SANT, J.

DATE : 6th JANUARY 2023.

Per Court :

1. This is an application by wife/applicant no.1, whose original proceeding under Domestic Violence Act was rejected, against which, she had filed Criminal Appeal No. 290/2012 in the Court of learned Sessions Judge, Aurangabad. However, the same came to be dismissed by order dated 10.11.2017 by the learned Additional Sessions Judge-13, Aurangabad, since the applicant no.1 did not take effective steps for long time and she also remained absent. The applicant no.1 therefore, prayed for restoration of the said appeal by filing Criminal

Misc. Application No.158/2019 dated 09.05.2019. The learned Sessions Judge-8, Aurangabad by judgment and order dated 23.02.2021, rejected the application for restoration of appeal, observing the conduct of applicants and also for the reason that the Court cannot alter or review the order once passed in view of Section 362 of the Criminal Procedure Code. It is this order dated 23.02.2021 that is challenged before this Court.

2. The learned Advocate for the respondents pointed out that the applicant no.1 has not taken any effective steps in the appeal. He further pointed out that though the appeal was dismissed for default on 10.11.2017, the application for restoration was filed for the first time on 09.05.2019, this clearly shows that she was not interested in prosecuting the matter at all. She is only interested in keeping the proceeding pending and is thereby harassing the respondents. It thus appears from the record that the wife had not taken steps and committed default in attending the Court. Even while making an application for restoration, she has taken a time of more than one and half year. This clearly shows that she any how wants to keep the matter

pending. Considering that the trial Court had refused all the reliefs to the wife and considering that the conduct of her, this Court finds that it would meet the ends of justice if the appeal is restored to its file subject to certain conditions. Hence the application is allowed by passing the following order.

ORDER

- (i) The impugned order dated 23.02.2021 passed by the learned Additional Sessions Judge-7, Aurangabad in Criminal Misc. Application No.158/2019 and order dated 10.11.2017 dismissing in default the Criminal Appeal 290/2012 is set aside.
 - (ii) The Criminal Appeal No.290/2012 is restored to its original file.
 - (iii) The applicants shall not commit any default henceforth and shall work out the appeal on a date fixed by the Court for hearing of the appeal.
 - (iv) Both the parties to appear before the Court on 25.01.2023 and to seek further date from the learned Appellate Court and argue the matter finally on said date.
3. The Criminal Application is disposed off in the aforesaid terms.

[KISHORE C. SANT, J.]

Najeeb.