

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

**CIVIL APPLICATION NO.7439 OF 2023
IN
FAMILY COURT APPEAL (ST) NO.1783 OF 2022**

Sau. Meenakshi w/o Bhagwan Bhandarge	...	Applicant
VERSUS		
Bhagwan s/o Vilas Bhandarge	...	Respondent

...

Advocate for Applicant : Mr. Shankar B. Kendre h/f. Mr. Panale Sachin S.
Advocate for Respondent : Mr. Suhas P. Urgunde

...

CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : **08.09.2023**

PER COURT :

Heard both the sides. By way of this application under Section 5 of the Limitation Act, the wife is seeking condonation of delay of 965 days in preferring appeal against the judgment and order of the Family Court, whereby, the learned Judge of the family court has passed a decree for divorce.

2. The learned advocate for the applicant submits that the applicant could not prefer the appeal since the husband - respondent was playing hide and seek. She had promptly approached the Grievance Redressal Cell at the concerned police station. He had assured of resuming cohabitation. The Roznama is also produced on record supporting her version. While the matter was being attended to by both the sides before the grievance cell, simultaneously, the respondent - husband filed the divorce proceeding and though the notice was received by her, it was because of his insistence that she was not required to appear. But he continue to prosecute the divorce proceeding and

obtained an *ex parte* decree. She got the knowledge on 25.12.2021 and has filed the appeal after obtaining the certified copy in the beginning of January 2023.

3. The learned advocate would refer to the decision in the matters of **Collector, Land Acquisition, Anantnag and Anr. Vs. Mst. Katiji and Ors.**; (1987) 2 S.C.C. 107, **G. Ramegowda Major and Ors. Vs. Special Land Acquisition Officer, Bangalore** ; (1988) 2 SCC 142 and **Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others**; (2013)12 SCC 649. He submits that applicant being a woman a pragmatic view needs to be taken. The applicant was not to gain anything by allowing her right to challenge the decree being lost by efflux of time. The delay is not due to any ulterior motive. She is ready to deposit some cost and the delay be condoned.

4. The learned advocate for the respondent - husband would oppose the request. He would point out the observations in the impugned judgment, to buttress his submission that at least on three occasions the appellant was served with notice regarding pending proceeding before the family court. She had duly received notice. Even counsellor had contacted her and lastly a money order was sent to her pursuant to the order of the Court so that she could attend the matter still she was indolent. She cannot be permitted to take advantage of her own wrong for having not attended to the matter and for the delayed knowledge of the decision.

5. Having considered both the sides, it does appear that the applicant was served with a notice of the divorce proceeding. She was also contacted by the marriage counsellor and ultimately even a money order of Rs.500/- was sent to her to enable her to attend the matter but to no avail.

6. However, the fact remains that though she was responsible for not attending the matter before the family court, her version that since she was not attending and therefore could not get the knowledge of the decision which was *ex parte* can certainly be said to be a reasonable explanation for her to get the knowledge of the decision belatedly.

7. It is a matter of divorce. The husband has been successful in getting the *ex parte* decree. In that view of the matter, a pragmatic approach would be required to be adopted even if some blame can be passed on the applicant also for the delay.

8. Considering the law laid down in the matters of **Collector, Land Acquisition, Anantnag, G. Ramegowda Major and Esha Bhattacharjee** (supra), we allow the application and condone the delay subject to the petitioner depositing cost of Rs.2000/- within four weeks. The respondent - husband shall be entitled to claim the cost.

(SHAILESH P BRAHME, J.)

(MANGESH S. PATIL, J.)