



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.8867 OF 2023
IN FCAST/13755/2023**

Yogita Sandip Patil

... Applicant

Versus

Sandip Nilkanth Patil and Ors.

... Respondents

...

Mr. Hemant S. Surve, Advocate for the Applicant

Mr. B. R. Kedar, Advocate for Respondent No.1

Mr. N. B. Patekar, Advocate for Respondent No.2

...

**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : 08.12.2023

PER COURT :

- . Heard both the sides.
2. This is an application seeking condonation of delay occasioned in preferring the appeal by the wife against a decree for divorce passed ex-parte.
3. The learned Advocate for the appellant/applicant would submit that admittedly, the decision was ex-parte and the applicant could get the knowledge when attempt was made to evict her from the dwelling house. In fact, he would submit that there was no proper service of the summons. The applicant was completely oblivious of the proceeding initiated by the respondent. After getting the knowledge, the application for certified copy was moved on 10/04/2023 and in due course, the appeal was preferred. There is

delay of 56 days. He would submit that in view of the decision of the full Bench of this Court, since the present appeal is an appeal against the order passed by the Family Court, the period of limitation would be 90 days. The delay was neither intentional nor was it deliberate and valuable right of the applicant to defend the divorce decree would be lost on technicalities. The delay is not inordinate and the same may be condoned.

4. The learned Advocate for the respondent – husband would submit that the whole conduct of the applicant is intentional and deliberate not only post the decree sought to be challenged but even during pendency of the divorce proceedings. She was duly served with the summons still she did not turn up and even if the decree was passed ex-parte, it was creation of her own default. She cannot be permitted to derive the benefit of her own wrong. Delay cannot be condoned on equitable grounds. There is no sufficient and cogent material or cause being put forth and the application be rejected. He would cite decision in the matter of **Kamalbai Narasaiyya Shrimal & Anr. Vs. Ganpat Vithalrao Gavare; 2007 (2) All MR 608.**
5. Heard both the sides and perused the record. The statutory period for preparing appeal against the decree passed by a Family Court is 90 days as has been laid down by the full Bench. Accordingly, the delay will have to be calculated and it comes to 56 days.
6. Obviously, the decree was passed ex-parte. At this stage, one will have to proceed with the assumption that there was a proper service that is why the Court after having passed the order and proceeded ex-parte against her and the proceeding ultimately culminated in passing of the impugned decree ex-parte.

7. The fact remains that since the applicant was not attending the divorce proceeding, unless there is something to attribute knowledge to her about the date of decision, the fact that she was absent throughout and could get the knowledge only subsequently cannot be disputed.
8. Even if it is assumed for the sake of argument, as has been submitted by the learned advocate for the respondent that her conduct in not attending the divorce proceeding was deliberate, the delay and the sufficient cause to be demonstrated in the light of provisions of Section 5 of the Limitation Act would be only in respect of the period after pronouncement of the order sought to be appealed against. The previous conduct, in our considered view would not be relevant, if the applicant is able to demonstrate that there was sufficient cause which prevented her from preferring the appeal in time.
9. Taking into account that it is a decree of divorce and the delay is meagre in conjunction with the cause being put forth, the delay deserves to be condoned.
10. The application is allowed. The delay is condoned. Appeal be registered.

[NEERAJ P. DHOTE, J.]

[MANGESH S. PATIL, J.]