



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

**CIVIL APPLICATION NO.7102 OF 2023
IN
CIVIL APPLICATION NO.11564 OF 2018
IN
SECOND APPEAL NO.568 OF 2010**

Deepak S/o Bhaskarrao Jogdand,
Age-45 years, Occu:Service,
R/o-Aditya Nagari, Behind Venkyatesh
School, Beed, Tq. & Dist-Beed.

...APPLICANT

VERSUS

Swati w/o Deepak Jogdand,
Age-42 years, Occu:-,
R/o-Vida, Tq-Kaij, Dist-Beed,
At present – Trimurti Apartment,
Trimurti Colony, Shriram Nagar,
Beed, Tq. & Dist-Beed.

...RESPONDENT

...
Mr.G.K. Naik-Thigale Advocate h/f. Mr.D.D. Deshmukh
Advocate for Applicant present through Video Conferencing.
Mr.A.M. Gholap Advocate h/f. Mr. S.S. Manale Advocate present
for Respondent.
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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 22nd DECEMBER, 2023

ORDER :

1. Present Application is filed for delay of 566 days getting

condoned in preferring an Application to recall the order passed by this Court in Civil Application No.11564 of 2018 in Second Appeal No.568 of 2010, dated 15th September 2021, and to recall the said order.

2. Heard learned Advocate Mr. .G.K. Naik-Thigale holding for Advocate Mr. D.D. Deshmukh appearing for the Applicant, through Video Conferencing. and Mr. A.M. Gholap Advocate h/f. Mr. S.S. Manale Advocate for Respondent.

3. Learned Advocate Mr. Thigale appearing for the present applicant, who was respondent in the said Civil Application No.11564 of 2018, submits that the Advocates who were representing the applicant were absent and the record showed that they had obtained adjournment to file say / reply and, even after being directed to file affidavit in respect of the income in view of the decision of the Hon'ble Supreme Court in **Rajnesh vs. Neha and another, [(2021) 2 SCC 324]**, it was not filed; were the observations of this Court and then on the basis of salary slip of the respondent – husband / present applicant (true photo copy) issued by the employer on 3rd May 2021, it was directed that the respondent / present applicant should pay an amount of Rs.15,000/- per month from the date of the

application till final hearing and disposal of the second appeal. The present applicant had no knowledge about the said order till the execution was filed and the summons of the same came to be served on the applicant somewhere around 25th January 2023. In fact the applicant is already spending Rs.12,000/- as maintenance. Applicant is required to incur about Rs.44,000/- per month in all, details of which have been given in the Application and it is submitted that those expenditures are essential expenditures. If applicant is again asked to pay further amount, then it is injustice to him and therefore the delay deserves to be condoned and the order deserves to be recalled.

4. Learned Advocate Mr. Gholap holding for Advocate Mr. Manale appearing for respondent had in fact submitted that adjournment be granted on personal difficulty of the learned Advocate Mr. Manale.

5. Unless the applicant would have shown some merit, there was no point point in considering the prayer for accommodation to the Advocate for respondent.

6. The record and proceedings would show that two Advocates were representing the present applicant and it was not the case that a day's absentee that was noted. Even prior to

that when specific order was passed, we could find that there was no compliance by them. By order dated 28th January 2021, the present applicant was called upon to file affidavit in view of the decision in **Rajnesh vs. Neha and another**, (supra). Sufficient time was given to file the affidavit i.e. till 23rd February 2021. On 23rd February 2021, Mr. Kulkarni was holding for two Advocates on record for present applicant and accommodation was sought to file affidavit due to non-availability of certain documents. As a last chance the time was extended. On 17th June 2021 the wife was directed to produce on record the latest salary slip of the husband. On 27th July 2021 the Advocate for the applicant was present through Video Conferencing but there was technical problem at his end and the matter was kept back but thereafter in the afternoon the learned Advocate did not log-in. Again the time to file affidavit was extended and ultimately the order was passed on 15th September 2021.

7. Thus, when the applicant was represented by two Advocates and none of them was taking care of the matter, is a picture tried to be painted when the applicant says that he was not aware about the order passed by this Court. The applicant does not say that the concerned Advocates had not informed him that he was supposed to file an affidavit. It is very easy to claim

ignorance. Learned Advocate for the applicant is now pointing out the examination-in-chief on affidavit filed by the applicant before the trial Judge on 25th April 2023. There is absolutely no necessity to go into those details, as those are the subsequent events. In the said affidavit, it is absolutely not mentioned that applicant – husband came to know about the order passed by this Court somewhere around 25th January 2023. Even if we consider that applicant came to know about the order after he was served in execution petition around 25th January 2023, still he has filed present application on 30th April 2023, which itself is further belated by three months, for which there is absolutely no explanation. Therefore, this Court comes to the conclusion that there is absolutely no reasonable ground for condoning the delay and there is absolutely no necessity to recall the order passed by this Court on 15th September 2021 and therefore, the Application deserves to be rejected.

8. The Application stands rejected.

[SMT. VIBHA KANKANWADI, J.]