



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

**CIVIL APPLICATION NO.16174 OF 2022
IN
CIVIL APPLICATION NO.8409 OF 2021
IN
SECOND APPEAL ST. NO.18398 OF 2021**

Indira W/o Sukhadeo Mhaske,
Age-36 years, Occu:Now Nil,
R/o- C/o- Latabai Baban Takale,
Suregaon, Taluka-Shrigonda,
District-Ahmednagar.

**...APPLICANT
(Ori. Applicant)**

VERSUS

- 1) Sukhadeo @ Hausrao Sarjerao Mhaske,
Age-42 years, Occu:Agriculture,
R/o-Chandgaon, Taluka-Shrigonda,
District-Ahmednagar,
- 2) Sarjerao S/o Bhau Mhaske,
Age-65 years Occu:Agriculture,
- 3) Laxmibai W/o Sarjerao Mhaske,
Age-60 years, Occu:Agriculture,
- 4) Narayan S/o Sarjerao Mhaske,
Age-40 years, Occu:Agriculture,

Respondent Nos. 2 to 4 are:
R/o-Chandgaon, Taluka-Shrigonda,
District-Ahmednagar.

**...RESPONDENTS
(Ori. Respondents)**

...
Mr.R.P. Bhumkar Advocate for Applicant.
Mr. Amit Yadkikar Advocate for Respondent Nos. 1 to 3.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 22nd DECEMBER, 2023

ORDER :

1. Present application has been filed for restoration of Civil Application No.8409 of 2021 in Second Appeal Stamp No. 18398 of 2021, to its original position by recalling the order passed by this Court on 25th October 2021 and for condonation of delay of 198 days.
2. The copy of the Application was not served on the learned Advocate Mr. Yadkikar who was then representing original respondent Nos. 1 to 3, however, learned Advocate appeared in the matter *suo moto*.
3. Important point to be noted is that Civil Application No.8408 of 2021 was for condonation of delay of 410 days in filing Second Appeal and in that matter, respondent No.4 was served but nobody had appeared in the matter. Civil Application

No.8409 of 2021 was for stay to the Judgment and award dated 1st November 2018 passed by the learned District Judge-9, Ahmednagar in Regular Civil Appeal No.60 of 2016.

4. Heard learned Advocate Mr. R.P. Bhumkar appearing for the applicant and learned Advocate Mr. Amit Yadkikar appearing for respondent Nos. 1 to 3.

5. It has been submitted on behalf of the applicant that Civil Application No. 8408 of 2021 got withdrawn, in view of the letter by the applicant. Under the said circumstance, Civil Application No.8409 of 2021 and Second Appeal St. No. 18398 of 2021 also stood withdrawn. But in the said letter which was then produced before this Court, it was specifically stated that there was a compromise between the applicant and her husband – respondent No.1 and it was decided that they would withdraw the proceedings against each other and then they would file petition for divorce by mutual consent in Shrigonda Court. Then by order dated 25th October 2021 the application and the appeal was withdrawn. It is submitted that thereafter a notice was issued when there was no response from the respondent – husband to file petition for divorce by mutual consent. But there

was no response from the husband. Now the respondent – husband is not willing to proceed for consent divorce but he is threatening the applicant – wife. Respondent - husband is also saying that the applicant has withdrawn the petition voluntarily. Thus, he is taking disadvantage of the order of this Court and therefore, the said order deserves to be recalled and the matter deserves to be restored.

6. At the outset, we would like to say that in the entire application there is absolutely no explanation as to why there is delay of 198 days in filing the present application. On this count itself, the application deserves to be rejected.

7. Even if independently it is to be considered, the record and proceedings of Civil Application No.8408 of 2021 would show that though the said application for condonation of delay of 410 days in filing second appeal was pending, the matter was got circulated by the learned Advocate for the applicant, to which letter dated 1st October 2021 addressed by the applicant to him was annexed. It was for withdrawal of the matter. On 25th October 2021 learned Advocate for the applicant was present, so also learned Advocate for respondent Nos. 1 to 3 was present.

After taking into consideration the letter given by the applicant, which was marked as Exhibit 'X', the wish of the applicant – appellant was considered and the Appeal was disposed of as withdrawn and the civil applications stood disposed of accordingly. Certainly it appears to be the voluntary act on the part of the applicant – appellant. No consent terms were produced even along with the application that the withdrawal of the second appeal was as a result of some settlement. When the second appeal along with the applications has been withdrawn, there is no question of recalling the said order.

8. The second appeal was arising out of H.M. Petition No.105 of 2012 before the learned Civil Judge Senior Division, Shrigonda filed by the present applicant for divorce and permanent alimony. By order dated 25th January 2016, it was partly allowed, and it was declared that the marriage between the applicant and her husband – respondent No.1 has come to an end. The husband – respondent No.1 appears to have preferred Regular Civil Appeal No.60 of 2016 and it was decided by the learned District Judge-9, Ahmednagar on 1st November 2018. The said appeal, then came to be allowed and the Judgment and decree passed in H.M. Petition No.104 of 2012 was quashed and set

aside. The applicant, thereafter intended to file the second appeal, which she has, as aforesaid, filed and then withdrawn the same. Proper precautions should have been taken by the applicant if at all there was any settlement. The legal proceedings were already pending and the settlement before private persons or that the mediation by private persons arrived at privately, should not have been relied. Here the applicant is not remediless. She is not coming with the case in specific words that she was cheated and the said letter was the outcome of cheating or misrepresentation. Under the said circumstance, there is absolutely no merit in the Application and it deserves to be rejected.

9. Further, it is surprising to note that in H.M. Petition the parents and brother of the husband were also made parties. It continued in the Regular Civil Appeal also and then in the Application. In fact, they were absolutely not necessary parties.

10. For the aforesaid reasons, the Application stands rejected.

11. After pronouncement of the order, the learned Advocate for the applicant orally submits that liberty be granted to the

applicant to file fresh proceedings for divorce. Such prayer cannot be granted when it was not asked when the application and the second appeal was got withdrawn. The said oral prayer is also rejected.

[SMT. VIBHA KANKANWADI, J.]

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