

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

**913 CIVIL APPLICATION NO.12237 OF 2022
IN
FAMILY COURT APPEAL NO. 47 OF 2022**

SADHANA SUNIL SHUKLA

... Applicant

VERSUS

SUNIL UMAPATI SHUKLA AND ANOTHER

... Respondents

...

Mr. N. K. Tungar h/f Mr. Jahagirdar Virendra V., Advocate for the Applicant
Mr. Menezes Joslyn A., Advocate for Respondent No.1

...

**CORAM : NITIN W. SAMBRE &
S. G. CHAPALGAONKAR, JJ.**

DATE : 14.03.2023

PER COURT :

1. The parties hereto got married on July 12, 2000. Out of matrimonial discord, the non-applicant/husband has taken out proceedings for divorce under the provisions of Section 13(1)(a) on the ground of cruelty.
2. The said proceedings were numbered as proceeding No.A-394/2013 before the Family Court, Aurangabad, in which, the applicant has attended the counseling. Apart from above, it appears that the applicant has even entered into certain settlement which was not taken to its logical end as is apparent from Exhibit-B and Exhibit-D to the appeal memo.
3. As a sequel of above, an *ex-parte* decree came to be passed on 26th September, 2014 by the Family Court.
4. The applicant thereafter feeling aggrieved preferred an application for setting aside said *ex-parte* divorce decree which was accompanied with an

application for condonation of delay. The said application came to be registered as Civil Misc. Application No.5/2015. The Family Court has rejected the said application as the applicant has failed to demonstrate the bona fide cause or sufficient cause which restrained her from preferring the appeal within the statutory period.

5. The aforesaid rejection vide order dated 31st July, 2017 appears to have been questioned in the writ petition, which was subsequently converted to Family Court Appeal. Since appeal is time barred, the application for condonation of delay is taken out.

6. We have heard the respective counsels at length. The contentions of the counsel for the applicant are that even if the decree is *ex-parte*, the Family Court is required to set aside the said decree if a sufficient cause is demonstrated. According to him, the applicant is permanent resident of Uttar Pradesh and is not aware about the local language i.e. Marathi. He would urge that the documents viz. the compromise deed at Exhibit-B or the counseling proceedings as reflected in the Counselor's report at Exhibit-D are in Marathi and as such, she has not understood the consequences of such documents or such proceedings. He would further urge that the delay caused in preferring an application for setting aside the decree for divorce, so also the delay caused in preferring present appeal is unintentional and bona fide. He has tried to substantiate his claim from the reasons cited in both these proceedings, so as to establish his claim that the delay in both these proceedings needs to be condoned.

7. While countering the aforesaid submissions, the counsel for the respondent would urge that the *ex-parte* decree for divorce which was delivered on September 26, 2014 is neither stayed nor set aside by the Court for last nine years. According to him, the non-applicant/husband has performed second marriage. By inviting attention of this Court to the reasons furnished by the Family Court in rejecting the prayer for

condonation of delay as reflected in the order dated July 31, 2017 passed below Civil Misc. Application No.5/2015, sufficiently reflects the very conduct and casual approach of the applicant. He would further urge that even if the applicant has preferred the writ petition in 2017, has failed to pursue the same diligently and as such, the present application is liable to be rejected.

8. We have considered the said submissions.

9. The fact remains that the applicant was having knowledge about the proceedings which were taken out by the non-applicant for grant of divorce being proceeding No.A-394/2013 can be eventually inferred from the compromise deed executed and verified before the Principal Judge, Civil Court, Aurangabad so also the report of Counselor of the Family Court, Aurangabad in the aforesaid proceedings.

10. Apart from above, it has to be inferred from the Roznama maintained before the Family Court that the applicant in fact appeared before the Family Court on 8th November, 2013 pursuant to the notice issued by the Family Court.

11. After the Counselor has submitted a report before the Family Court, abruptly the applicant has withdrawn herself from the said proceedings before the Family Court.

12. As a sequel of above, the Family Court in our opinion was justified in decreeing the claim for divorce.

13. Apart from above, when the applicant has moved before the Family Court seeking condonation of delay in setting aside the *ex-parte* decree for divorce, the applicant has claimed that it is the conduct of non-applicant/husband which has prompted her to keep herself away from the proceedings.

14. However, in view of aforesaid observation, it can be inferred that the applicant was not only having intimation about the divorce proceedings initiated by the non-applicant/husband but in fact, she has participated in the said proceedings before the Family Court and as such, the decree of which, the setting aside was sought cannot be termed as *ex parte* one.

15. The application moved under Order IX Rule 13 for setting aside such decree in our opinion as such is not at all maintainable.

16. Apart from above, what can be noticed is the respondent having taken advantage of the prevailing situation viz. the operation of the divorce decree for almost nine years, has performed second marriage and as such, the situation has become irreversible. That being so, even if we accept the contention of the applicant for the sake of argument, no purpose will be served even if we allow the application for condonation of delay.

17. In the aforesaid background, we are left with no other option but to make observation that the applicant's conduct herself does not warrant the prayer for condonation of delay be granted. The application as such stands rejected and as a consequence, the appeal stands disposed of.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

Sameer