

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

CIVIL APPLICATION NO.11585 OF 2022
IN FCAST/19749/2022 WITH CA/11586/2022 IN FCAST/19749/2022

GANGASAGAR W/O RAJENDRA MAGRE
VERSUS
RAJENDRA S/O NAMDEO MAGRE

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Advocate for Applicant : Mr. Vaibhav B. Kulkarni
AGP for Respondents: Mr. M.R. Mundhe h/f. Mr. C.J. Pahilwan.

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

DATE : 14th MARCH 2023

P.C.:-

The principal Judge, Family Court, Aurangabad on July 12, 2016 delivered a judgment thereby dissolving the marriage solemnized between the applicant and non applicant on March 13, 2022. As a sequel, the appeal is carried to this Court which is delayed by 2115 days.

2. While trying to make out a case for condonation of delay, counsel for the applicant would urge that the applicant is financially stressed and in view thereof, was unable to approach this court within the period of limitation. Apart from this, he would urge that maintenance ordered is not paid and the applicant has various health ailments which has prevented her from approaching this court in an appeal within the period of limitation.

3. As such, according to him the delay of 2115 days caused in

preferring the appeal needs to be condoned.

4. In nutshell, the submission of counsel for applicant is, the Family Court has committed an error in granting divorce without considering the fact that the applicant was willing to cohabit with the respondent. According to him, the findings recorded by the Family Court, for grant of order of dissolution of Marriage under Section 13(1) (ia) of the Hindu Marriage Act is not in tune with the requisites of the said section. So as to substantiate his contention, he has taken us through the judgment of the family court.

5. The counsel for respondent Mr. Mundhe holding for Mr. G.J. Pahilwan would urge that, leave apart sufficient cause in support of condonation of delay, even before the family court, the applicant was completely non-cooperative as in spite of notice, she had chosen not to attend the proceedings. He would further urge that in the proceeding for restitution of conjugal rights the applicant has specifically stated that she is not willing to cohabit with the husband/non applicant. That being so, the court below was justified in drawing the inference.

5. We have appreciated the aforesaid submissions.

6. In support of the prayer for condonation of delay of more than 6 years, the reasons cited are, health ailments; applicant being single lady facing financial hardship and the impact of CORONA.

7. So as to substantiate the claim in respect of health ailments of the applicant, and the financial difficulties, we hardly see any supporting document. Rather, it can be inferred from the record that the applicant has not at all explained the inordinate delay of more than six

years in approaching this court to question the judgment of the family court.

8. The family court, while considering the prayer of the non-applicant husband, for ordering dissolution of marriage has considered the very stand of the present applicant that she is not willing to cohabit with the respondent husband. The documentary evidence viz. In the form of certified copy of the Petition for Conjugal Rights being Petition No. A 156/2014 and other documents are rightly relied on.

9. Apart from above, the applicant is unable to demonstrate the cause which had prevented her from approaching this court. The plea put forth by the non applicant husband in support of grant of divorce was duly established in view of the contentions of the non applicant remained un-controverted because of the very conduct of the applicant wife.

10. In view of the above, no fault can be noticed in the judgment impugned or it cannot be said that there is sufficient cause which prevented the applicant from lodging the proceeding within limitation. That being so, the application for condonation of delay stands dismissed. The Family Court appeal also stands dismissed. All pending civil applications stand disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-