
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3088 OF 2019
IN
SECOND APPEAL (ST) NO.29852 OF 2019
WITH
SECOND APPEAL (ST) NO.29852 OF 2019

Pradeep Lahu More

.. Applicant

Versus

Anuradha Paradeep More

.. Respondent

Mr. Roshan Hule i/by Mr. Raju Suryawanshi,
Advocates for the Applicant.

Mr. Rajesh Parab, *Advocates for Respondent.*

CORAM : VINAY JOSHI, J.

DATE : 27 SEPTEMBER 2023

P. C.

1. This is an Application under Section 5 of the Limitation Act seeking to condone the delay of 7 years and 319 days caused in preferring Second Appeal. The Applicant is husband whilst the Respondent is his wife. Initially Applicant has filed Hindu Marriage Petition no.48/2007 seeking decree of divorce on the ground of cruelty and desertion. The Trial Court has passed a decree of divorce on both counts vide its

judgment and order dated 5th December 2009. Being aggrieved, wife has preferred Civil Appeal no. 2/2010 before the learned District Judge. The said appeal was contested by the Applicant husband. However the Appellate Court has allowed the wife's appeal and thereby set aside the decree of divorce vide order dated 13th October 2011.

2. Feeling aggrieved by the said decision dated 13th October 2011, the Appellant husband has preferred second appeal. However there happened to long delay hence this application came to be filed. The Applicant has set out the reasons for delay in para 6 and 7 of the Application. It is Applicant's contention that his father died in the year 2005 whilst his mother died in the year 2010. Though Applicant pleaded that his elder brother died on 31st May 2012 however during arguments it has been stated that there was a mistake and Appellant's brother died on 2nd May 2006. The Applicant further stated that his son met with an accident on 7th June 2017 in which his son became 20% disable. It is Applicant's contention that because of several deaths in the family, he was under grave shock and therefore was not in position to file the appeal. It is Applicant's contention that in the

meantime he has tried to patch up the differences and asked his wife for cohabitation but she refused. The Applicant took voluntary retirement in 2018. As the marriage did not work and the parties are residing separately since long, he took decision to challenge the judgment and order. Hence the delay.

3. Respondent wife resisted this Application by filing affidavit in reply dated 3rd January 2023. Though it is not denied that there were several deaths in the family; however it is contended that all deaths occurred prior to the passing of the judgment in Appeal no. 2/2010 dated 13th October 2011. It is stated that after decision of appeal the Respondent wife has filed Application no.36/2011 for enhancement of maintenance allowance. The said Application was partially allowed vide Order dated 30th November 2011. The Applicant-husband has challenged the said order in Revision. However it was rejected in the year 2016. It is contended that the Respondent wife has filed recovery proceedings no. 37/2015 and 61 of 2017 in which the Applicant had put resistance. It is Respondent's endeavour to show that the Applicant was quite diligent as he has appeared and contested the

proceedings of maintenance during the year 2011 to 2017. It is submitted that the Applicant deliberately did not challenge the order of Appellate Court. However after keeping quiet for 7 years he took decision to challenge which cannot be termed as 'sufficient cause'.

4. I am aware of the line of decisions of Supreme Court that while considering the delay condonation Application, the Court shall adopt liberal approach to uphold the cause of justice. The term 'sufficient cause' has to be liberally construed. In the light of said position, the matter has been examined. Undisputedly, the First Appeal was decided on 13th October 2011 whilst the Second Appeal has been preferred almost after 8 years. Though the Applicant is not obliged to explain each days' delay; however the cause must satisfy the judicial conscience. The Applicant has initially canvassed the cause of 3 deaths in the family. However those deaths occurred prior to the decision of First Appeal and thus plays no relevance. The Applicant stated that his son met with an accident on 7th June 2017 meaning thereby after 6 years from the decision of First Appeal. The Applicant stated that he was taking care of his son as well as family of his deceased

brother. Be that as it may, but taking care of the family cannot be termed as an obstacle to fight litigation. The Applicant himself has stated that after his retirement, he perceived that marriage was not workable and therefore took decision to challenge the order of Appellate Court. The aspect of delay will not depend on the wish of the Appellant. One may not take decision to file appeal for years together but always that would be at his detriment.

5. On the other hand, it reveals that the Applicant was quite vigilant as the order of enhancement passed similarly in the month of October 2011 was challenged in revision. The Applicant also appeared in maintenance recovery proceedings. There is no justification as to why particularly for filing second appeal he has not made up this mind. The first appeal was decided in the year 2011 which has conferred certain rights to other side which cannot be taken away after long gap of 7 years. Under the concept of liberal approach one cannot overlook the facts and condone the delay of several years. One can not overlook the law of limitation which has specific purpose. The law always helps the vigilant and not the person who is blatantly negligent. In view of

above, the Applicant fails to make out sufficient cause. Hence Application stands rejected.

6. In consequence, second appeal also stands disposed of.

[VINAY JOSHI, J.]