



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 2809 OF 2022
IN
FAMILY COURT APPEAL (ST) NO. 3052 OF 2022**

Sadhana Bamne ...Applicant/Appellant
Versus
Vasant Balu Bamne ...Respondent

**WITH
INTERIM APPLICATION NO. 918 OF 2023
WITH
INTERIM APPLICATION NO. 919 OF 2023
IN
FAMILY COURT APPEAL (ST) NO. 3052 OF 2022**

Sadhana Bamne ...Applicant/Appellant
Versus
Vasant Balu Bamne ...Respondent

Dr. Dhanlakshmi Iyer, *for Applicant/Appellant.*

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

DATE : SEPTEMBER 14, 2023

P. C.

1. The above Interim Application No. 2809 of 2022 is filed seeking condonation of delay of 30 years and 250 days in filing the present Appeal. The explanation given for this delay is set out in

paragraphs 3 and 4 of the Interim Application which reads thus:

“(3) Further that, according to S.5 of the Limitation Act, any application or appeal may be so admitted if the delay is satisfactorily explained to the Hon’ble Court. Also that only exclusion stated is those under chapter 21 of the CPC. And also, that the grounds mentioned herein below would make out sufficient cause and thereby fall within the ambit of S.5 of the Limitation Act. Following are the grounds:

- a. That the Appellant was poverty stricken at the time the Order was decreed in 1991.*
 - b. That the Appellant had no source of income and used to beg on the streets to fend for herself and her children. (Marked and Annexed Exhibit B).*
 - c. That the Appellant did not have money to appoint a lawyer for herself and file an appeal against the order of 1991.*
 - d. That also there was fear psychosis created in the mind of the Appellant by her husband along with 2 women who used to reside with him and also threatened to kill her and her 2 children time and again.*
 - e. It is very clear there has been sheer injustice apportioned to the appellant with regards that order of 1991 which does not have any maintenance / alimony allocated, neither any share in the property to her or her children.*
- (4) That the delay has been due to just, sufficient, reasonable grounds and has not been deliberate or intentional. The delay may thus be condoned. Therefore, the delay condonation is prayed for accordingly.”*

2. On reading this justification, we are wholly unsatisfied that the delay of more than 30 years can be condoned for the reasons stated above.

3. However, the learned counsel appearing on behalf of the Applicant submitted that the Limitation Act is not a statute designed to defeat statutory rights. She submitted that the wife has a statutory right to maintenance, since the decree of divorce is granted. Whether the wife has the statutory right to maintenance or otherwise is not something this Court can consider before condoning the delay. It is now well settled that at the time of condoning the delay all the Court has to look at is the justification given for the delay and not the merits of the matter. In other words, this Court cannot condone the delay without justification merely because it finds that the merits of the case are good. On the basis of what is stated in the Application, we are afraid that we find that there is absolutely no justification for this inordinate delay of 30 years and 250 days. If we entertain this application, it would be an injustice to the opposite party, who obtained a decree of divorce way back in the year 1991.

4. In these circumstances, the above Interim Application is dismissed. However, there shall be no order as to cost.

5. In view of the dismissal of the interim application for condonation of delay, the above Family Court Appeal is also dismissed and all Interim Applications filed therein (seeking interim maintenance & stay), also stand disposed of.

6. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]