

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

CRIMINAL REVISION APPLICATION NO. 198 OF 2021

Ayaz Hazifulla Ansari and anr.	... Applicants
v/s.	
The State of Maharashtra and anr.	 Respondents

Mr. Harihar Bhavé a/w. Ms. Rupa Bhavé and Ms. Divya Menon
i/b. Bhavé and Co. for the Applicants.
Mr. R.M. Pethe, APP for the State.
Ms. Mamta Sadh and Mr. Aditya Kavale i/b. Zohair and Co.
for Respondent No.2.

CORAM: R.G. AVACHAT, J.

DATED : 21st FEBRUARY, 2023.

P. C. :-

- . Heard learned advocate for the respective parties.

2. The challenge in this Revision Application is to the order dated 31/03/2021 passed by the Court of the Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai in Miscellaneous Application No.780 of 2020. Vide order impugned herein, the Application moved by the present Applicant for condonation of delay in preferring an appeal under section 29 of The Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act') came to be rejected.

3. It was a case of the delay of over 04 years and 08 months. The

order that was proposed to be challenged by preferring an appeal was restraining the Applicant from transferring his immovable property. According to the learned advocate for the Applicant, the Respondent has been residing in flat which was a shared household. The trial court had no reason to pass a restraint order in respect of other properties and for an indefinite period. The Respondent is being separately paid maintenance amount. According to the learned advocate for the Applicant the order that was sought to be challenged in appeal before the Sessions Court would remain in force forever. The same would have no logic. The Applicant being the owner of the property ought to have been free to exercise his proprietary right. He, therefore, urge for condonation of delay. According to him, the learned advocate who has represented the Applicant before the trial court did not apprise him of the necessity to challenge the order.

4. The learned advocate for the Respondent would, on the other hand, submit that it is a case of gross inordinate delay. The Respondent in fact had preferred an appeal against the order, the part of which the Applicant herein proposes to challenge in appeal, but for delay. The Applicant thus could not be heard to say of having been unaware of the order and its implication. The learned advocate for the Applicant

ultimately urged for rejection of the Application.

5. Considered the submissions advanced by the learned advocate for the respective parties. Perused the order impugned herein.

6. If the impugned order rejecting the application for condonation of delay in preferring the appeal under section 29 of the DV Act may tantamount to dismissal of the appeal itself, then the Applicant may seek amendment in this application to challenge the said order on merits. In view of this Court, the long delay can be compensated in terms of high costs. Matter deserves to be decided on its own merits. In view of the same, the Application is allowed in terms of the following order :-

(a) The Application is allowed subject to payment of costs of Rs.1,00,000/- to be deposited in the Sessions Court, Greater Mumbai, to be paid to the Respondent.

(b) The order dated 31/03/2021 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai in Miscellaneous Application No.780/2020 is hereby set-aside.

(c) The learned Additional Sessions Judge, Greater Mumbai shall decide the appeal on its own merits within a period of six months from the date of receipt of copy of this order.

7. Revision Application stands disposed of in above terms.

PREETI
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JAYANI

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Date: 2023.02.23
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(R.G. AVACHAT, J.)