



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CIVIL APPLICATION NO. 466 OF 2023 IN
FAMILY COURT APPEAL NO. 21815 OF 2022

Sau. Bharati Ashwinkumar Sanap

..VS..

Ashwinkumar Pandhari Sanap

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. Meera Kshirsagar, Advocate for the applicant.
Shri P.B. Patil, for the respondent/sole.

CORAM : VINAY JOSHI AND M.W.CHANDWANI, JJ.
DATED : 05/12/2023.

Heard.

2. This is an application seeking for condonation of delay of 267 days in filing the appeal challenging the decree of divorce dated 15.02.2022 passed by the Family Court, Buldhana in Petition No.A-271/2021.

3. It is the applicant's case that the respondent husband has filed a petition for divorce. In said proceedings, though summon was served however she was unable to attend, and thus, *ex-parte* divorce decree has been passed. The applicant would submit that initially, she has applied to the Family Court for setting aside the *ex-parte* decree in terms of Order IX Rule 13 of the Code of Civil Procedure, however the said application was rejected on 17.11.2022. According to the applicant, most of time has been consumed in prosecuting the said application, and thus, the delay was not intentional.

4. The other-side objected this application by

contending that the applicant was duly served with the summon by the Family Court, however she has deliberately remained absent. While rejecting the application for setting aside the *ex-parte* decree, the Family Court has dealt the issue and held that there was no sufficient cause for non-appearance, which resulted into rejection.

5. It is a matter on record that the decree which is under challenged, has been passed by the Family Court on 15.02.2022. The applicant has applied for setting aside the *ex-parte* decree and the said application was rejected on 17.11.2022 whilst this appeal has been filed on 23.12.2022 i.e. on 32nd day.

6. To our mind, pendency of that application has to be considered while deciding the delay condonation application. It requires to be noted that the applicant is a wife who is suffering from *ex-parte* divorce decree. In line of decisions, it has been ruled that the Court shall consider the delay condonation application liberally with a view to advance the cause of justice.

7. Considering the above circumstances, the application deserves to be allowed. Hence, application is allowed. Delay stands condoned. The appeal be registered and numbered accordingly.

8. The application stands disposed of.

FAMILY COURT APPEAL ST. NO. 21815 OF 2022

Heard.

2. Issue notice to the respondent, returnable on 03.01.2024. Learned Counsel Shri P.B. Patil, waives notice for the respondent.

(M.W.CHANDWANI, J.)

(VINAY JOSHI, J.)

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