



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

**CIVIL APPLICATION NO. 870 OF 2024
IN FCAST/796/2024**

**VANDANA SUDHIR GAIKWAD AND ANR
VERSUS
SUDHIR BASWANTRAO GAIKWAD**

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Advocate for Applicants : Mr. Gitte Mukund D.
Advocate for Respondent : Mr. R. M. Gaikwad & Mr. P. M. Gaikwad

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 26 AUGUST 2024

PER COURT :

. This is an application under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 224 days in preferring appeal against the judgment and order passed by the Family Court putting up a challenge to the extent of refusing to grant any maintenance to the appellant no.1 under Section 18 of the Hindu Adoption and Maintenance Act and as regards the quantity of the maintenance awarded to the appellant no.1.

2. We have heard both the sides.

3. Learned advocate for the appellants submits that due to financial crunch, the appellant no.1 was unable to file the appeal in time. The appellant no.2 is the minor. Important right to seek maintenance would be loss if appeal is not condoned, putting the both the appellants to a great hardship.

4. Learned advocate for the respondent would oppose the application. He would submit that after recording the evidence, the trial Court had concluded that the appellant no.1 was not entitled to claim any maintenance. There was observation about she having sufficient income and she could not prefer the appeal due to financial crunch.

5. We have carefully considered the rival submissions and perused the papers.

6. Obviously the merits of the claim being put forth by the appellants, cannot be a ground for consideration of the request for condoning the delay in preferring the appeal. It is trite that the view is expected of the Court for the reason that the appellants are not to gain anything by allowing their right to be defeated by the law of limitation. The appellants apparently are not deriving any unfair advantage. Irrespective of the merits, since it is a matter of maintenance being claimed by the appellants, their such right cannot be shunted on the technicalities of the law of limitation. The application is allowed and the delay is condoned. Office to register the appeal.

7. Issue notice to the respondent in the appeal. Mr. Gaikwad learned advocate waives service for respondent.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]