



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

SECOND APPEAL NO. 147 OF 2023

Surendra Vasant Mahajan

.. Appellant

Versus

Varsha Surendra Mahajan

.. Respondent

Mr. M. R. Wagh, Advocate for the Appellant.

Mr. P. H. Patil, Advocate for Respondent.

CORAM : R. M. JOSHI, J.

DATE : 24th JANUARY, 2024.

PER COURT :-

. This appeal is filed under Section 100 of the Code of Civil Procedure taking exception to the judgment and order dated 07.12.2021 passed in Civil Miscellaneous Application No. 7/2021. The First Appellate Court has refused to condone the delay of five years and nine days caused in preferring appeal against the judgment and order dated 27.03.2015 passed in H.M.P No. 112/2014.

2. The appellant is husband who had filed petition under the provisions of Section 13 (1A) (1B) of the Hindu Marriage Act for dissolution of marriage being H.M.P No. 112/2014. The wife appeared in the said proceeding. The husband though filed his affidavit in examination in chief, but thereafter he remained absent. As a result of

this, the petition was dismissed by order dated 27.03.2015. Thereafter, the husband filed another petition in the year 2019 seeking divorce from the wife. The said petition was withdrawn. It is in the year 2021 the husband has filed application for condonation of delay caused in preferring appeal by contending that since April 2012 the wife has deserted him and before the Trial Court in H.M.P No. 112/2014 she requested him not to seek decree of divorce. For this reason he did not pursue the said proceeding. He further alleges that, even thereafter she did not resume cohabitation and according to him this is satisfactory explanation for condonation of delay.

3. The learned counsel for the appellant – husband submits that, if the delay is not condoned, there is huge loss to him. According to him, as the wife has given assurance to the husband of resuming cohabitation, therefore, he had not pursued H.M.P No. 112/2014. So also, he withdrew subsequent petition filed by him.

4. Perusal of the application does not show any such plea being taken by the husband for the purpose of condonation of delay. The only reason given is that since the wife has requested him not to obtain decree of divorce, he did not pursue H.M.P No. 112/2014. In order to seek condonation of delay it was on the part of the husband must show sufficient ground. He has to plead and prove the circumstances which

were beyond his control resulted into causing of delay in preferring the appeal against the judgment and order in the H.M.P No. 112/2014. Needless to say that he would not be permitted to take advantage of his own fault. As rightly observed by the First Appellate Court that there is gross delay on the part of the husband which is not satisfactorily explained.

5. This Court therefore finds no perversity in the said finding. Since no substantial question of law is involved in this appeal, same is dismissed.

(R. M. JOSHI, J.)

RS.B.