



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

SECOND APPEAL NO.167 OF 2024

Mandakini w/o Pratap Patil,
Age : 33 years, Occu.: Household,
R/o.: Lodga Tq. Ausa Dist. Latur
At present C/o: Vijaykumar Belure
“Yedeshwari Sadan”, (Pitachi Girani)
Bodhe Nagar, Latur – 413512

.... **APPELLANT**
(Orig. Respondent)

VERSUS

Pratap s/o Shesherao Patil,
Age : 48 years, Occu.: Business & Agril.,
R/o.: Lodga, Tq. Ausa, Dist. Latur

.... **RESPONDENT**
(Orig. Petitioner)

.....
Mr. M. L. Dharashive, Advocate for the Appellant

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 20/07/2024

ORDER :

1. Heard learned counsel for the appellant / wife on admission.
2. It appears that the present appellant / wife, who is the original respondent in Hindu Marriage Petition No.275 of 2024, has challenged the order dated 14/02/2024 passed by the learned Principal District Judge, Latur in Miscellaneous Application No.90 of 2023, whereby her application for condonation of delay of 7 years

10 months and 18 days in filing appeal against the judgment and decree dated 21/07/2015 in the aforesaid Hindu Marriage Petition, passed by the learned trial court i.e. Civil Judge (Senior Division), Latur, for divorce, has been refused.

3. The learned counsel for the appellant / wife submits that the learned first appellate court has definitely erred in not condoning the delay in filing the appeal by the present appellant against the decree of divorce by ignoring the principle of natural justice since the original decree of divorce was passed *ex-parte*. Therefore, according to him, the substantial question of law involved in this appeal is that the learned first appellate court failed to consider that the appellant had shown sufficient cause for the delay. However, on going through the impugned judgments it is clearly evident that the decree of divorce granted by the learned trial court in Hindu Marriage Petition No.275 of 2014, has been passed long back i.e. on 21/07/2015. Further, it is evident that after passing of such decree of divorce, the respondent / husband has already performed second marriage and out of that second marriage he is having two children. This fact is also reflected in the impugned order. Though the learned first appellate court refused to condone the delay by observing that no sufficient ground for condoning such

huge delay of 7 years and more, was mentioned by the present appellant, but even if the said delay had been condoned by the learned trial court, then also due to performance of second marriage by the respondent, the appeal itself had become infructuous. Section 15 of the Hindu Marriage Act, 1955 is reproduced herein below.

“When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again”.

4. On going through the aforesaid section, it is clearly evident that once a decree of divorce is passed in favour of husband by a competent court and after its appeal period is over, if he remarries, then the second marriage performed by him, cannot be said illegal even if the first wife files appeal alongwith delay condonation application against such decree of divorce. Here in this case also after passing of decree of divorce respondent / husband has remarried long back and now having two children out of the said

marriage. Thus, considering this fact even if the delay is condoned, then it will give rise to a futile proceeding which has already become infructuous. Therefore, considering the fact that appeal of the appellant / wife against the decree of divorce became infructuous since its inception, there is no point in condoning the delay. In view of the same, no substantial question of law appears to be involved in the matter and therefore, the present second appeal stands dismissed at admission stage and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)