

1 February 2024.

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

**INTERIM APPLICATION NO. 2175 OF 2022
(FOR CONDONATION OF DELAY)**

IN

SECOND APPEAL (ST.) NO.13334 OF 2021

WITH

SECOND APPEAL (ST.) NO. 13334 OF 2021

Karuna Rajendra Kale

**...Applicant/
Appellant**

V/s.

Rajendra Narayan Kale

...Respondent

Mr.Ashok B. Tajane a/w. Mr. Yogesh Thorat, *for the Applicant/
Appellant.*

Mr.Vinayak Patil a/w.Mr. Vishal N. Nevshe, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 1 February 2024.

P.C. :

1. The Applicant/Appellant has filed the Second Appeal challenging the Order dated 20 October 2018 passed by the District Judge, Solapur rejecting the application for condonation of delay of 2 years 6 months and 6 days in filing the First Appeal before the

1 February 2024.

District Court for challenging the Decree dated 4 May 2012 passed by the 2nd Joint Civil Judge Senior Division, Solapur in Hindu Marriage Petition No. 24 of 2009. In filing the present Second Appeal, there is delay of 2 years and 248 days for condonation of which Interim Application No.2175 of 2022 is filed.

2. Perusal of the explanation offered in paras-3 to 10 of the Interim Application would indicate that the Applicant has pleaded that she is residing at Osmanabad whereas the Order rejecting the application for condonation of delay was passed by the District Judge at Solapur on 20 October 2018. She contends that she does miscellaneous agricultural work. That she resides at a remote place and that she did not have any source of communication with her advocate. That she acquired the knowledge about the order dated 20 October 2018 only when she visited Solapur in the month of February 2021 after relaxation of lockdown restrictions. The Applicant has claimed benefit in respect of the period of lockdown for which, the period of limitation was extended by the Apex Court from time to time upto 15 July 2021. On these broad grounds, condonation of delay of 2 years and 248 days is sought in filing the Second Appeal.

3. Applicant's contention that she is residing at remote place cannot be accepted in view of the fact that she has admitted in the application that she resides at Osmanabad. Even in the cause-

1 February 2024.

title, the current address of the Applicant is shown at Osmanabad. Osmanabad is a District Headquarter and cannot be treated as remote place, by any stretch of imagination. The further explanation that she did not have any source of communication with her advocate at Solapur is difficult to believe in the modern era of communication when virtually every citizen of the country possess a mobile phone as a means of communication. It is therefore impossible to accept that she did not have any source of communication with her advocate.

4. The explanation of Covid-19 pandemic cannot be accepted in the present case in view of the fact that the impugned order was passed on 20 October 2018 whereas the Covid-19 pandemic outbreak occurred much later in March 2020. Therefore, Petitioner cannot rely upon the events that occurred after March 2020 with a view to justify the delay in not filing the Appeal immediately after 20 October 2018. I therefore find the explanation offered by the Applicant for condonation of inordinate delay of 2 years and 248 days to be totally unacceptable. On that count, the application deserves to be rejected.

5. In addition to the unacceptable nature of explanation offered by the Applicant in application for condonation of delay, her conduct in prosecuting Civil Misc. Application No.9 of 2015 also assumes importance. The decree of divorce was granted by the Trial

1 February 2024.

Court on 4 May 2012. Applicant filed Civil Misc. Application No.9 of 2015 alongwith Regular Civil Appeal in the District Court after delay of 2 years, 6 months and 6 days. She did not diligently prosecute the said application which came to be dismissed for default. The application was required to be restored. This is how the application for condonation of delay in Regular Civil Appeal remained pending on the file of the District Judge for a period of three long years and the same came to be rejected on 20 October 2018 for Applicant's failure to offer sufficient cause. The Applicant is thus guilty of delay at several stages.

6. Considering the overall conduct of the Applicant as also unacceptable nature of explanation pleaded by her in the application, I am not inclined to condone the delay of 2 years and 248 days. It must also be borne in mind that the dispute sought to be agitated by the Applicant is about matrimonial relationship with the Respondent. The marriage between the parties has been dissolved by the Trial Court almost 12 years ago on 4 May 2012. The Applicant cannot be permitted to keep the sword of litigation hanging on the Respondent by not taking proper steps to challenge the Orders passed from time to time. She is guilty of delay at very stage.

7. Considering the overall conspectus of the case, I am not inclined to condone the delay in filing the present Second Appeal.

1 February 2024.

The Interim Application is accordingly **rejected**. Consequently,
Second Appeal (St.) No. 13334/2021 also stands **rejected**.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

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