

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 13585 OF 2023
IN
FAMILY COURT APPEAL (LODGING) NO. 15878 OF 2023

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Sharmila Ahlawat

..Applicant

In the matter between :

Sharmila Ahlawat

..Appellant

Versus

Rajesh Ahlawat

...Respondent

Mr.Anuj Tiwari h/f Adv. Seema Sarnaik, Advocate for Applicant/Appellant.

Ms.Firdaus Moosa i/b Mr.Hrishikesh Amembal, Advocate for Respondent.

**CORAM : B.P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : JANUARY 18, 2024.

PC:

1. The Interim Application is filed seeking a condonation of delay of 117 days in filing the above Family Court Appeal. The condonation of

delay has been vehemently opposed by the learned Advocate appearing on behalf of the Respondent-husband.

2. The argument on behalf of the Respondent-husband is that there is absolutely no case made out for condoning the delay and no sufficient cause is shown, and therefore, the above application ought to be dismissed.

3. We have heard the learned counsel appearing on behalf of the Applicant/Appellant-wife and the Respondent-husband. We have also carefully perused the above Interim Application. The explanation given for the delay is set out in paragraph Nos.2, 3 and 4 of the Interim Application. For the sake of convenience, the same are reproduced hereunder :

2. The Applicant submits that due to her work schedule and other family commitment, the Applicant was not able to contact her advocate for challenging the impugned order dated 21.10.2022 passed by the Ld. Principal Judge, Family Court, Mumbai in Petition No. 883 of 2016. It was only after the Applicant was served notice of the FCA No. 20 of 2023 filed by the Respondent challenging the judgment and order dated 21.10.2022 in PA No. 597 of 2016 and PA No. 883 of 2016 was served on the Applicant on 27.03.2023, the Applicant contacted her present Advocate on 29.03.2023, her Advocate informed her that Appeal should have been filed within 90 days from the date of the said order i.e. on or before 24.02.2023. The Applicant submits that her present Advocate also informed her that certified copies of the common judgment and order dated 21.10.2022 and Decree passed in PA No. 597 of 2016 and PA No. 883 of 2016 would be required so as to file the above Appeal and for purpose of computation

of period of limitation without which she will not be allowed to file the Appeal. The Applicant further submits that her Advocate at the time of hearing of FCA No. 20 of 2023, had orally informed the Hon'ble High Court that the Applicant is in process of filing Appeal challenging the order dated 21.10.2022.

3. The Applicant submits that she applied for certified copy of judgment and order dated 21.10.2022 on 06.12.2022. The same was ready on 11.01.2023 and delivered on 12.01.2023. There is a delay of 117 days in filing the above Appeal.

4. The Applicant submits that in the circumstances, as stated hereinabove, the delay of 117 days has been caused inadvertently in filing the above Appeal and the same may be condoned. The Applicant has a good case on merits. No harm and prejudice would be caused to Respondent if delay is condoned. In the interest of justice, prayers prayed for be granted. Grave harm and prejudice would be caused to Applicant if delay is not condoned, which cannot be compensated in terms of money.

4. Considering what is stated in the Application, we are satisfied that sufficient cause is made out for condoning the delay. In these circumstances, the delay is condoned and the Registry is directed to number the above Family Court Appeal subject to the Applicant/Appellant removing all other office objections, within a period of four weeks from today, failing which, the above Family Court Appeal shall stand dismissed without further reference to the Court.

5. The Interim Application is accordingly disposed of. No order as to costs.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B.P. COLABAWALLA, J.]