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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 8727 OF 2024
IN
SECOND APPEAL (ST) NO. 9683 OF 2024**

Padmaja Vinod Patil ... Applicant/Appellant
Vs.
Vinod Vibhakar Patil ... Respondent

Mr. Ajit V. Alange for the Appellant /Applicant.

CORAM : GAURI GODSE, J.

DATE : 6th SEPTEMBER 2024

ORDER :

1. Heard learned counsel for the applicant. This application is for condonation of delay of 335 days in filing the Second Appeal. Learned counsel for the appellant submits that the reasons for delay are explained in paragraph 4 of the application. He submits that the delay is unintentional and only due to financial constraints she was unable to contact her Advocate. Learned counsel for the applicant thus submits that the reasons as explained in paragraph 4 be accepted and delay be condoned.

2. Learned counsel for the applicant further submits that the trial court had dismissed the suit for decree for divorce filed by the husband on the ground of cruelty and desertion. He submits that in the first appeal, the appellate court has granted decree on the ground of desertion. He submits that ground of cruelty is not accepted by the First Appellate Court. He further submits that the First Appellate Court while passing the decree for desertion has not taken into consideration the appellant's right of claiming alimony and residence. He submits that the issue regarding maintenance of the minor daughter is also not taken into consideration by the Appellate Court.

3. Learned counsel further submits that it was the appellant's case that she was driven out of the matrimonial house. He submits that the appellant has explained in her written statement regarding the circumstances under which she was driven out of the house. Learned counsel for the appellant thus submits that second appeal would raise substantial question of law with regard to misappreciation of the evidence on record and the question regarding appellant's right of claiming permanent alimony including the maintenance of the minor daughter.

4. I have perused the papers of the Second Appeal. The Second Appeal raises following substantial question of law :

(i) Whether the reasons recorded by the First Appellate Court for granting a decree of divorce on the ground of desertion would amount to ignoring the pleadings and supporting evidence of the wife explaining the reasons and circumstances under which she was driven out of the matrimonial house ?

(ii) Whether the reasons recorded by the First Appellate Court for accepting the ground of desertion as pleaded by the husband would amount to misappreciation of the wife's pleadings and supporting evidence ?

(iii) Whether the First Appellate Court was required to consider the issue regarding the wife's entitlement of claiming permanent alimony and residence as well as maintenance of the minor daughter at the time of passing decree for dissolution of marriage ?

5. Prima facie, I find that the applicant has pleaded justifiable ground for condonation of delay.

6. Since the Second appeal raises the aforesaid questions of law, issue notice to the respondent in Interim Application No. 8727 of 2024. Office is directed to issue notice alongwith copy of this order. Notice is made returnable on 18th November 2024.

7. In addition to court notice, learned Advocate for the appellant shall serve the respondent by private service alongwith copy of this order and file service affidavit before the next date.

[GAURI GODSE, J.]