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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**INTERIM APPLICATION NO.13297 OF 2024**  
**IN**  
**FAMILY COURT APPEAL NO.18 OF 2022**

Nirmala Tavares .. Applicant  
Versus  
Brian Rudolph Tavares .. Respondent

**ALONG WITH**  
**INTERIM APPLICATION NO.2682 OF 2020**  
**IN**  
**FAMILY COURT APPEAL NO.18 OF 2022**

Ajinkya Udane .. Applicant  
Versus  
Nirmala Brian Tavares .. Respondent

**WITH**  
**INTERIM APPLICATION NO.10355 OF 2022**  
**IN**  
**FAMILY COURT APPEAL NO.18 OF 2022**

Brian Rudolph Tavares .. Applicant  
Versus  
Nirmala Brian Tavares .. Respondent

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**Mr. Abhijit Sarwate a/w. Mr. Hardev Kaur, *Advocates for Applicant (through VC).***

**Mr. Brian Tavares, *Respondent-Husband appeared in present.***

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

**DATE : NOVEMBER 22, 2024**

**P. C.**

**INTERIM APPLICATION NO.13297 OF 2024**

1. The above Interim Application is filed by the Applicant/Appellant-Wife *inter alia* seeking a declaration that there is no delay in filing the above Family Court Appeal and in the alternative, if the Court finds that there is any delay, then sufficient cause has been made out for condoning the delay.

2. The facts in the present case are the peculiar. The Applicant/Appellant-Wife was the original Petitioner, who had filed two Petitions before the Family Court, Pune. One Petition was filed seeking a divorce from the Respondent-Husband and the other was an Anti Suit Injunction Petition. In these Petitions, the Respondent-Husband appeared and filed two Applications for rejection of these two Petitions. These Applications filed by the Respondent-Husband came to be dismissed by an Order of the Family Court dated 19<sup>th</sup> July, 2018. Being aggrieved by the said Order, the Respondent-Husband preferred Writ Petition No.9470 of 2018 before the Single Judge of this Court. This Writ Petition came to be disposed of by Order dated 19<sup>th</sup> November, 2018 and the matter was remanded back to the Family Court, Pune.

3. On remand, the Learned Family Court, Pune re-heard the Applications for rejection of the Petitions and by Order dated 4<sup>th</sup> December, 2018 came to the conclusion that since the Family Court did not have territorial jurisdiction, it returned both the Petitions under the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908 (*“CPC”*), rather than rejecting the Petitions under Order VII Rule 11.

4. Being aggrieved by this Order of the Family Court, namely, of return of the Petitions, the Appellant/Applicant-Wife preferred an Appeal from Order No.744 of 2019 [AO (ST) No.36497/2018] (*“AO”*). This AO was filed on 20<sup>th</sup> December, 2018, and finally disposed of by a Learned Single Judge of this Court vide his Order dated 22<sup>nd</sup> February, 2022. By this Order, the Learned Single Judge held that the order of the Family Court cannot be challenged by filing an Appeal from Order and granted liberty to the Applicant/Appellant-Wife to convert the Appeal from Order to appropriate proceedings as permissible and in accordance with law.

5. Pursuant to this liberty, AO No.744 of 2019 was converted into the present Family Court Appeal on 7<sup>th</sup> March, 2022 and numbered as FCA No.18 of 2022. It is in this light that the Applicant/Appellant-Wife contends that there is no delay in filing the present Appeal. The only reason why the above Interim Application is necessitated because the

Respondent-Husband filed an Interim Application stating that there is a delay of 1144 days in filing the above Family Court Appeal and there was no application for condonation of delay. It is in this light that the present Interim Application is filed.

6. We must mention that in fact the above Appeal has already been admitted on 27<sup>th</sup> March, 2023. At that time, the Respondent-Husband had in fact appeared in person. Be that as it may, from the facts that we have narrated above and which are really undisputed, we are clearly of the opinion that there is no delay in filing the above Family Court Appeal. In these circumstances, the above Interim Application is allowed in terms of prayer clause (a) which reads thus :-

*“a) It be held that there is no delay to file the FCA No.18/2022.”*

7. We make it clear that by condoning the delay, we have not opined on the merits of the Appeal one way or the other. Those will be decided when the Family Court Appeal is taken up for hearing.

8. Interim Application No.10355 of 2022 which is preferred by the Respondent-Husband seeking a dismissal of the above Family Court Appeal on the grounds more particularly mentioned in the said Interim Application, will be heard along with the above Family Court Appeal.

9. We are informed that the affidavit in reply to the above Interim Application has already been served on the Respondent-Husband and in fact the Respondent-Husband has also filed an affidavit in rejoinder thereto. However, the affidavit in reply remained to be formally filed in the Registry. We, therefore, permit the Appellant/Applicant-Wife to file her affidavit in reply to Interim Application No.10355 of 2022 in the Registry within a period of one week from today.

10. 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.]**