

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 1233 OF 2023 IN
FAMILY COURT APPEAL ST. NO. 14971 OF 2023

Smt. Aparna w/o Tushar Ashtrputre

..vs..

Shri Tushar s/o Vijayrao Ashtrputre

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Amit D. Bhate, Advocate for the applicant/appellant.
Shri P.P. Kotwal, Advocate for the respondent.

CORAM: SMT.M.S. JAWALKAR AND PRAVIN S. PATIL, JJ.
DATED : 16/07/2025.

Heard.

2. By this application, the applicant/appellant is seeking condonation of 307 days in filing the Appeal against the judgment and decree passed by the Family Court on 29.07.2022 in Petition No.A-621/2018.

3. It is the submission of the applicant that in response to the notice issued by the Family Court, she appeared in the matter, however as she resides at Khamgaon and the proceedings were initiated in Nagpur, she was required to travel approximately 300 kilometers to attend the proceedings, which posed several difficulties, including the financial burden of travel expenses. It is further pointed out that since the month of June 2020, the mother of the applicant was suffering from various ailments and there was nobody to take care of the mother of the applicant as his brother is the only bread earner of the family. Subsequently, the mother of the applicant was expired on 31.08.2021. It is further pointed out that in the year 2021, the brother of the applicant was also diagnosed with liver cirrhosis. As such, she was busy to take care of her brother and unable to attend the

court proceedings. However, the brother was also expired on 05.10.2022. In support of these submissions, medical reports and death certificate of both, are placed on record.

4. *Per contra*, learned Counsel appearing for the respondent strongly opposed the application by pointing out that the manner in which the present applicant has conducted the proceedings before the Family Court. He has pointed out that the applicant appeared before the Family Court and filed an application for dismissal of the petition on 12.06.2019, which was dismissed on 11.12.2019. Against which initially the applicant has preferred First Appeal bearing F.C.A. st. no.3118/2020 along with the application for condonation delay. However, later on, said appeal was withdrawn and Writ Petition No.3955/2021 was filed on 20.09.2021. As such, it is submission of the respondent that during this period, the applicant was prosecuting the case though she is stating that her mother and brother was facing ailment. As such, reasons put forth for condonation of delay are not sufficient and the application deserves to be rejected.

5. We have heard both the learned Counsel and perused the record.

6. We have considered the objection of respondent to condone the delay. But firstly we would like to mention that in matrimonial matters, the issue involved are preferably required to be decided on merits.

7. Furthermore, respondent did not deny the fact of death of mother and brother of the applicant. The entire submission of respondent is on the facts, which took place before the Judgment delivered by the Family Court.

8. One more important fact is required to be noted down that like the case of the Family Court, it is seen that the applicant also failed to prosecute the writ petition during the

said period. Hence, there is reason to believe her submission.

9. In view of the aforementioned peculiar facts of the case, and upon finding the reasons put forth by the applicant to be satisfactory, the delay is hereby condoned. The application is allowed and disposed of accordingly.

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10. Heard.

11. Learned Counsel for the respondent waives notice on behalf of the respondent.

12. Place the matter on 18.08.2025 for final disposal, at the state of admission.

(PRAVIN S. PATIL, J.)

(SMT. M.S. JAWALKAR, J.)

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