



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

CIVIL APPLICATION (CAO) NO.1568 OF 2024

WITH

FAMILY COURT APPEAL NO. 36 OF 2024

(DR. MONALI SUSHIM GAJBHIYE @ MONALI MURLIDHAR MESHARAM & ANR...VS..STATE OF MAH.
THR. PSO, BELTARODI & ANR.)

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

Court's or Judge's orders

Shri V.N.Morande, Advocate for Appellant.
Shri Aniket Sawal, Advocate a/w Shri H.R.Gdhia, Adv. for Respondent.

CORAM : ANIL S. KILOR AND
PRAVIN S. PATIL, JJ.

DATED : MARCH 28, 2025.

CIVIL APPLN.(CAO) NO.1568/2024.

For the reasons stated in the application, the
Civil Application for permission to file additional
documents on record is allowed.

The Civil Application is **disposed of**
accordingly.

FAMILY COURT APPEAL NO.36/2024.

1. Heard.
2. This appeal is arising out of the judgment and
order dated 24th July 2024 rejecting the application
preferred by the appellant for condonation of delay in
filing the appeal.

3. The appellant is wife of the respondent. She filed an application for setting aside the ex parte decree dated 02/11/2023 granting custody of son-Kshitij to the respondent-husband. Since, there was delay of 99 days in filing such application for setting aside ex parte decree an application under Section 5 of the Limitation Act for condonation of delay was moved.

4. In the said application it is the case of the appellant that she received knowledge of such ex parte decree on 20/02/2024. It is stated that she received WhatsApp pdf Message on her mobile from Dr. Poonam Kshirsagar informing that the petition filed by the respondent for custody of the child has been decided by the trial Court ex parte. Thereafter, the appellant took steps and filed appeal along with an application for condonation of delay.

5. The learned appellate Court rejected the said application vide impugned judgment and order dated 24/07/2024, the same is the subject matter of challenge in the present appeal.

6. We have heard the learned counsel for the respective parties.

7. Shri Morande, learned counsel for the appellant drawn our attention to para 7 of the impugned judgment and order to show certain observations which were made basis for rejection of the application and

submitted that they are contrary to the record. He, therefore, prays that the impugned judgment and order may be quashed and set aside.

8. On the other hand, Shri Aniket Sawal holding for Shri H.R. Gadhia, learned counsel for the respondent submits that the appellant attended the proceedings on every date and she had knowledge about passing of the ex parte decree, despite the same, she did not take steps to challenge the same. He, therefore, submits that as there is no merit in the appeal, the same may be rejected.

9. In light of the rival contentions made by the parties, we have perused the record and the impugned order.

10. The appellate Court while rejecting the application for condonation of delay has recorded reasons in para 7 of the impugned judgment and order, which read thus :

“7. On perusal of the record filed by respondent along with list of document vide Exh.20 show that present respondent produced on record certified copy of Order sheet and Roznama sheet in D.V. Case No. 07/2022 pending before learned J.M.F.C., Gadchiroli. On perusal of Roznama sheets of the said certified copy indeed, on 04/12/2023, present applicant who is also was present before the Court with her learned counsel has received copy of list of document which was filed on record. The list of document show that a copy of Judgment in divorce proceeding A-116/2021

and Judgment child custody petition No. D-06/2023 were produced before the Court. So the Court record clearly show that applicant and her learned counsel were aware about the Judgment, on 04/12/2023. This makes statement of present applicant in para no.2 that she only got information on 20/02/2024 on whatsapp and then she applied for certified copies and she got copies on 07/03/2023, is not correct statement. Almost 2 to 3 months prior to alleged date, she had knowledge about the Judgment and order passed by the Court but she waited for that for two and half month and for the sake of creating date of knowledge of order, she claimed that she received whatsapp messages. The delay is not explained properly, rather the respondent stands that she had earlier knowledge of judgment in custody petition is acceptable. Therefore, the powers under section 5 of the Limitation Act cannot be invoked.”

11. From the above referred observations, on perusal of the Roznama sheets, it was noticed that on 04/12/2023 the appellant was present before the Court with her counsel and has received copy of list of documents which were filed on record. The list of documents shows that the copy of the judgment in divorce proceeding and the judgment in the case of child custody were produced before the Court and therefore, the appellant had knowledge about the judgment dated 02/11/2023. The Court further observed that, therefore, it cannot be accepted that she got knowledge about the order on 20/02/2024, for the first time.

12. To examine the correctness of such observations, we have perused the Roznama dated 04/12/2023. Though the roznama shows that on the said date the appellant was present, however, there is no mention about supply of list of documents along with judgment dated 02/11/2023.

13. Furthermore, there is no endorsement on the application for amendment that the said copy of the application was served upon the appellant. Similar is the case about the application for grant of permission to file list of documents by the non-applicant i.e. the respondent.

14. In the circumstances, we have no hesitation to hold that the above referred findings recorded by the appellate Court is contrary to record and in absence of any evidence that the list of documents along with copy of judgment dated 02/11/2023 was served upon the appellant, it cannot be said that the appellant had knowledge about the said judgment passed ex parte. Therefore, we are of the opinion that the matter needs to be remanded back to the appellate Court to decide the same afresh.

15. Accordingly, we pass the following order :

- i) The Family Court Appeal is **partly allowed**.

- ii) The impugned judgment and order dated 24/07/2024 passed in Misc. Civil Application No.04/2024 is hereby quashed and set aside.
- iii) The matter is remanded back to the Family Court, Bhandara for deciding the application for condonation of delay afresh, after hearing both the parties.

The Family Court Appeal stands **disposed of** accordingly.

(PRAVIN S.PATIL,J)

(ANIL S.KILOR,J)

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