



**IN THE HIGH COURT OF BOMBAY AT GOA.  
CRIMINAL WRIT PETITION NO. 87 OF 2025.**

RAOJI HARMALKAR AND ANR.

...PETITIONERS

~ VERSUS ~

SUNANDA KASHINATH HARMALKAR

...RESPONDENT

**APPEARANCES:**

for the Petitioners.

*Mr L. Raghunandan Advocate under  
Legal Aid.*

for the Respondent.

*Mr P. Sawaikar and Ms J. Sawaikar,  
Advocates.*

**CORAM : AMIT S. JAMSANDEKAR, J.**

**Reserved on : 5<sup>th</sup> March 2026.**

**Pronounced on : 6<sup>th</sup> March 2026.**

**ORDER**

1. By the present Petition, the Petitioners have challenged the order dated 29<sup>th</sup> April 2025 (*the Impugned Order*) passed by the Learned Additional Sessions Judge-3, North Goa, (*the Learned*

*Judge*) in Criminal Miscellaneous Application No. 16 of 2025. By the impugned order, the Learned Judge has dismissed the Application filed by the Petitioners seeking condonation of the delay of 323 days in filing an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (*the Act*). By the Appeal, the Petitioners sought to challenge the interim maintenance order dated 2<sup>nd</sup> January 2024, passed by the Judicial Magistrate First Class- C Court, Bicholim (*the Judicial Magistrate*).

2. The 1<sup>st</sup> Petitioner is the son of the Respondent, and the 2<sup>nd</sup> Petitioner is the daughter-in-law of the Respondent. The Respondent filed proceedings under the Act against the Petitioners, alleging domestic violence and seeking maintenance from the Petitioners. The proceedings filed by the Respondent are pending before the Learned Judicial Magistrate. However, the Learned Judicial Magistrate was pleased to order interim maintenance of ₹2000 per month from the date of the Application filed by the Respondent.
3. The interim order passed by the Learned Judicial Magistrate came into effect on 2<sup>nd</sup> January 2024. There was no Appeal preferred by

the Petitioners against the order dated 2<sup>nd</sup> January 2024. The order passed on 2<sup>nd</sup> January 2024 was not complied with by the Petitioners and, therefore, the Respondent was constrained to file an Application before the Learned Judicial Magistrate, *inter alia*, seeking directions against the Petitioners to comply with the order dated 2<sup>nd</sup> January 2024.

4. The Application filed by the Respondent was disposed of by the Learned Magistrate on 26<sup>th</sup> November 2024. On the date of disposal of the Respondent's Application, the Petitioners were required to pay ₹ 1,72,000 to the Respondent towards the arrears of the interim maintenance. The Petitioners were granted 30 days from 26 November 2024 to pay the arrears to the Respondent. The Learned Magistrate was further pleased to order that, failing to comply with the order dated 26<sup>th</sup> November 2024, a warrant of attachment be issued to attach the movable properties of the 1<sup>st</sup> Petitioner. The Petitioners paid a very small part of the arrears to the Respondent. However, it is an admitted position that the Petitioners have not paid a substantial portion of the arrears to the Respondent.

5. Thereafter, on 26<sup>th</sup> December 2024, the Petitioners filed an Application before the Learned Judge seeking condonation of the delay of 323 days in filing an Appeal under section 29 of the Act. According to the Petitioners, the delay caused in filing the Appeal was not intentional and was due to *bona fide* reasons and unavoidable circumstances. The reasons for the delay, *inter alia*, include that the Petitioners were forced to change the Advocate, thereby delaying the seeking of appropriate legal advice. It is further stated in the Application that the Petitioners are illiterate and not well-versed in legal procedure, and therefore, the delay occurred. Apart from these reasons, the Petitioners have alleged severe financial constraints and that they did not receive proper legal guidance.
6. After considering the pleadings and hearing the parties, the Learned Judge was pleased to dismiss the Application filed by the Petitioners seeking condonation of delay.
7. Mr. L. Raghunandan, Learned Counsel appearing for the Petitioners, submitted that the impugned order passed by the Learned Judge is contrary to the well-established principles of law and therefore is perverse. He further submitted that the impugned order proceeds on a technical ground, and the Learned Judge ought

to have heard the Petitioners on merit. It is the case of the Petitioners that the Learned Judge did not consider the material on record and ignored the facts that the Petitioners are illiterate, have financial constraints and did not receive proper legal advice.

8. Mr. P. Sawalkar, Learned Counsel appearing for the Respondent, submitted that the impugned order has been passed after considering all the material on record, and therefore, the Petitioners have not made out any grounds in the present petition. As far as the allegations made by the Petitioners that the Petitioners are illiterate or have financial constraints are concerned, the Respondent submitted that the Petitioners have made false statements on oath before the Learned Judge as well as before this Court. Therefore, it is submitted that no equitable relief should be granted to the Petitioners. He further submits that the grounds alleged by the Petitioners that the Petitioners did not receive proper legal advice are also false and there is nothing on record to justify the grounds mentioned by the Petitioners to condone the delay.
9. The principles of law for deciding the application seeking condonation of delay are well settled. In ***Esha Bhattacharjee V. Managing Committee of Raghunathput Nafar Academy &***

**Ors., (2013) 12 SCC 649**, the Hon'ble Supreme Court, after considering previous judgments, once again detailed the guidelines, which read as follows:

*21. From the aforesaid authorities the principles that can broadly be culled out are:*

**21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.**

**21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose** regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

**21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.**

**21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.**

**21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.**

**21.6. (vi) It is to be kept in mind that adherence to strict**

*proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

**21.7. (vii)** *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

**21.8. (viii)** *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

**21.9. (ix)** *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

**21.10. (x)** *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

**21.11. (xi)** *It is to be borne in mind that no one gets away*

*with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

**21.12.** (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

**21.13.** (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

**22.** *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

**22.1.** (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

**22.2.** (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

**22.3.** (c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

**22.4.** (d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of*

*course, within legal parameters.*

***(emphasis supplied)***

10. I am guided by these principles. It is a settled position of law that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. Though the condonation of delay cannot be sought as a matter of right, the Court cannot be hyper technical or mechanical in deciding the applications for condonation of delay. Such applications will have to be decided on the basis of the facts and circumstances of each case. While deciding the application, a liberal, justifiable and equitable approach ought to be adopted. However, there should be grounds that establish sufficient cause, a cause that is reasonable. While exercising discretion, equity must be balanced.
11. In the background of the facts of the present case, grounds mentioned in the Petition, submissions made by the Learned Counsels and the above-mentioned guidelines laid down by the Hon'ble Supreme Court, I perused the impugned order.
12. First of all, I seriously doubt the *bona fides* of the Petitioners because the Petitioners have challenged the order of interim maintenance only after the Learned Magistrate passed an order on the Application of the Respondent to pay the entire arrears to the Respondent. Until that order, the Petitioners did not abide by the order passed by the Learned Judicial Magistrate, this itself shows a lack of *bona fides*. Further, the ground that the Petitioners are illiterate are false on the face. The educational qualification of the

1<sup>st</sup> Petitioner, as stated by his mother in the affidavit in reply, is not denied by the Petitioners. If the Application is based on false statements, then the litigant does not deserve any equitable relief. In the present case, the Petitioners have not only made a false statement in the Application before the Learned Judge that the Petitioners are illiterate, but have also reiterated the same ground in the present Petition.

13. The Learned Judge has rightly held that there is no supporting material to support any of the grounds alleged by the Petitioners in the Application seeking condonation of delay. The Learned Judge has considered all the grounds of the Petitioners, including the ground that the 1<sup>st</sup> Petitioner was not well.
14. All these factors show that the Application for condonation of delay was filed by the Petitioners in a very casual manner. Such applications cannot be filed by adopting such a casual approach. The Applicant ought to show *bona fides* as well as sufficient grounds in support of the Application. In the present case, the Learned Judge has rightly rejected the Petitioners Application because there is no sufficient ground established by the Petitioners in support of their application.
15. In any case, there is not only a mere delay in making the Application. The delay is inordinate. Particularly, when the Petitioners are challenging the interim order.
16. The Respondent, who is the mother of the 1<sup>st</sup> Petitioner, is 68 years old and therefore the interim maintenance of ₹2000 per month

granted by the Judicial Magistrate is equitable in the facts and circumstances of the present case. The Petitioners have not abided by the interim order, and even as of this date, there are substantial arrears to be paid by the Petitioners to the Respondent. It would not be equitable to allow the Petitioners to challenge the order of interim maintenance after such a long period.

17. Therefore, I reject the submissions made on behalf of the Petitioners that the Learned Judge did not consider material on record. The Learned Judge has considered each and every ground alleged by the Petitioners and has assigned reasons for the findings. Therefore, I do not agree with the submissions made on behalf of the Petitioners that the impugned order is perverse, arbitrary or based on technicalities. Mere allegations of perversity are not enough. The Petitioners are bound to establish perversity on the face of the record.
18. There is no merit in the present petition. **Consequently, the petition is dismissed.**
19. However, there shall be no order as to cost.

**[AMIT S. JAMSANDEKAR, J.]**