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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.38352 OF 2025
WITH
INTERIM APPLICATION NO.38353 OF 2025
IN
FAMILY COURT APPEAL (ST) NO.24180 OF 2025
WITH
FAMILY COURT APPEAL (ST) NO.24180 OF 2025
(NOT ON BOARD. TAKEN ON BOARD)

Diksha Rajan Shah alias Dolly .. Applicant/Appellant
Vinod Shah

Versus

Rajan Rajnikant Shah .. Respondent

...

Ms.Ankita Nishad for the Applicant/Appellant

Mr.Akash Singh for the Respondent.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATE : 23rd JANUARY, 2026

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P.C:-

1. In the Appeal filed under Section 19 of the Family Courts Act, 1984 against an ex-parte order passed on 11/03/2022 by the Principal Judge, Family Court, Mumbai at Bandra in Divorce Petition No.A-575 of 2019, the Appellant has filed an application seeking condonation of delay in filing of the Appeal.

As per the Application, there is a delay of 954 days i.e. 2 years and 224 days in filing the Appeal.

2. We have heard Ms.Ankita Nishad, a Legal Aid counsel, who is assisting Ms.Vrushali Maindad, who was appointed through Legal Aid.

The learned counsel has justified the delay, by relying upon the pleadings in the Application, and she submit that against the decree of divorce dated 11/03/2022 passed by the Family Court, on the ground that it was an ex-parte decree, she filed Civil Misc. Application No.58 of 2022 before the Family Court, Bandra. However, this application was rejected on 11/04/2025 and after its rejection, the Applicant has chosen to approach this Court. But, during all this period, the delay had occasioned and it is her submission that the delay is *bona fide* and, since, the Applicant is desirous of contesting the matter on merits, an opportunity may be afforded to her.

The counsel for the Respondent has, however, vehemently opposed the Application for condonation of delay, as it is his submission that by order dated 11/04/2025, the Family Court has rejected the Misc.Civil Application by clearly recording that in cross-examination, the Applicant has admitted that she has refused the service of notice and she also admitted that the summons were pasted on her door and she was aware of the court dates. According to him, the invocation of the remedy in form of Misc.Civil Application is merely a farce, as all the while when the proceedings were going on before the Family Court, and the Applicant/wife was aware of the said proceedings, but chose not to mark her presence.

3. We have perused the Application alongwith the reasons stated therein.

We have also perused the cross-examination of the Applicant in Misc. Civil Application to note that she has

categorically admitted that she refused to accept the summons presented by the bailiff on 09/07/2019 in case No. A-575/19.

She further admit that she accepted the service of notice, but was not aware of the proceedings. She has also admitted in the cross-examination that the bailiff had pasted the copy of notice on the front door on the said date and she was also aware that the Respondent has filed proceedings against her.

A categorical admission by her in the cross-examination is also to the following effect:-

“It is not true that I purposely did not attend the Court. True that I appeared in the court once in lock-down when everyone’s health was in control. It is true that my email ID is reachdikshanow@gmail.com. It is true that the mail shown to me is send by me to Gurudev and copy of the same is send to the respondent in 2023.”

There is also further categorical admission by her that she was aware about the court dates.

4. In the wake of the aforesaid, when the Applicant was aware about the proceedings filed for divorce, but she chose to remain absent, which resulted in ex-parte decree being passed on 11/03/2022, according to us, it is only the Applicant who shall take the blame, as despite knowing about the pendency of the proceedings, she refused to mark her appearance and contest the same.

Once the judgment and decree is passed, she approached the Family Court for setting aside the decree and this relief is refused to her purely based on her conduct.

5. We do not find the order granting ex-parte divorce as well as the order passed by the Principal Judge, Family Court,

Mumbai on 11/04/2025 suffering from any legal lacuna, as what is important to note is that the Applicant (Respondent/Wife) to the proceedings had knowledge of the same and she has categorically admitted in the cross-examination that she refused to accept the summons and was aware of the proceedings and even on one day, she attended the proceedings. In these circumstances, we do not feel that the Application deserve to be entertained by granting benefit of availing a remedy wrongfully, which according to us, was availed with malicious intent to set aside the ex-parte order.

Since the Application lack *bona fides*, we dismiss the the Interim Application taken out for condonation of delay. Resultantly, the Appeal cannot be entertained.

6. The Legal Services Authority is directed to remit the legal remuneration due and payable to Ms.Ankita Nishad, as she has marked her appearance and presented the case of the Applicant before us, within a period of six (6) weeks from today.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)