



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

CRIMINAL WRIT PETITION NO. 691 OF 2025

PETITIONERS

- : 1. Jainab Bi W/o Yunus Laluwale,
Age 37 years, Occu. Household,
2. Ashmira Anjum D/o Yunus Laluwale,
Age 16 years, Occu. Education (Minor)
- (Applicant no.2 is Minor, through her
natural guardian Mother applicant no.1)
Both R/o C/o Sk. Qasam Kamanwale
Mohta Mill Road, Firdos Colony,
Akola, Tq. & Dist. Akola,
P.S. Ramdaspath, Akola.

VERSUS

RESPONDENT

: Yunus S/o Rannu Laluwale,
Aged 39 years, Occu. Teacher,
R/o C/o Nagar Palika Hindi Prathmik Shala,
Chaudhari Ground, Achalpur,
Tq. Achalpur, Dist. Amravati.

Mr. Syed S. Ali, Advocate for the petitioners.
Mr. Parth L. Sagdeo, Advocate for the respondent.

CORAM : M. M. NERLIKAR, J.
DATE : APRIL 28, 2026

ORAL JUDGMENT:

1. **RULE.** Rule made returnable forthwith. Heard finally
by the consent of the learned counsels appearing for the parties.
2. The petitioners by this petition are challenging the

order dated 14.07.2025 passed by the learned Judge, Family Court at Akola in Cri.M.A. No. 01/2023, thereby rejecting the application for condonation of delay in filing restoration application.

3. The learned counsel for the petitioners submits that the petitioners had filed proceedings for recovery of arrears of maintenance vide execution proceedings bearing E.R. No. 74/2019. However, the Family Court by its order dated 21.6.2022 dismissed the proceedings in default on the ground that the petitioners failed to attend the Court in spite of granting several opportunities. Learned counsel further submits that accordingly, the petitioners preferred an application for restoration of the proceedings along with an application for condonation of delay of 139 days caused in filing restoration application. However, the Family Court rejected the delay application by the impugned order.

4. The learned counsel for the petitioners further submits that admittedly, petitioner no.1 is the wife and petitioner no.2 is the daughter of the respondent. Maintenance was granted to them and since the maintenance was not paid by the respondent, the petitioners were required to file execution proceedings. He

further submits that due to outbreak of the Covid-19 Pandemic which impacted the entire nation and the World, the petitioners could not pursue the execution proceedings. In view of the same, the Family Court dismissed the proceedings in default. He further submits that the petitioners accordingly filed an application for setting aside the order of dismissal and for restoration of the execution proceedings. However, the Family Court merely on technical ground dismissed the application for condonation of delay observing that the petitioners have failed to explain each day delay and no sufficient reasons are assigned in the application. The learned counsel submits that the Family Court ought to have accepted the explanation tendered by the petitioners and ought to have allowed the application for condonation of delay. However, the Family Court has miserably failed to take into consideration the reasons assigned in the application and erroneously rejected the same. Therefore, the present petition be allowed and the impugned order be quashed and set aside.

5. On the other hand, the learned counsel appearing for the respondent vehemently opposed the petition. He invited my attention to the order dated 21.06.2022, whereby the execution proceedings were dismissed in default by the Family Court. He

further invited my attention to the application filed by the petitioners for condonation of delay of 139 days, wherein according to the learned counsel for the respondent, no sufficient reason for condoning the delay has been shown and the application is merely an eye-wash. He further submits that the only reason put forth for explaining the delay was the outbreak of the Covid-19 Pandemic. Therefore, according to the learned counsel, the application itself sans the reason explaining the delay. The delay cannot be condoned in a routine manner unless sufficient reasons are shown. Under such circumstances, the learned counsel prayed for dismissal of the petition.

6. I have considered the rival submissions and gone through the impugned order dated 14.07.2025 passed by the Family Court. I have also perused the application filed by the petitioners for condonation of delay.

7. On perusal of the application for condonation of delay, it appears that the execution proceedings were initiated in the year 2019. It further appears that the applicants/petitioners could not remain present before the Family Court due to the outbreak of the Covid-19 Pandemic. When the applicants/ petitioners approached

the Family Court and inquired about the matter, it was noticed that the execution proceedings were dismissed for want of prosecution on 21.06.2022. According to the petitioners, they got knowledge of dismissal of the proceedings for the first time on 15.11.2022 and from the said date the delay ought to have been calculated. It further appears that thereafter the petitioners applied for certified copies of the relevant documents on 16.11.2022 and the same were received on 06.12.2022. Thereafter, the application for restoration was filed on 08.12.2022 i.e. within 30 days from the date of knowledge of the order dated 21.06.2022.

8. No doubt, the execution proceedings were dismissed on 21.06.2022. The reason assigned in the application explaining the delay seems to be reasonable as at the relevant time there was outbreak of the Covid-19 Pandemic. Needless to mention that the entire nation was under threat of the outbreak of Covid-19. Even there was restrain on the liberty of the citizens at that time. It could be further gathered that as soon as the petitioners got knowledge on 15.11.2022 about dismissal of the proceedings, they immediately applied for certified copies on 16.11.2022 and they received the certified copies on 06.12.2022 and she filed the

restoration application on 08.12.2022. Therefore, from the said fact it could be gathered that the petitioner is interested in prosecuting the matter.

9. The facts stated above show that the petitioners were diligent and therefore, the reason assigned by the petitioner ought to have been accepted by the Family Court by taking pragmatic view. The Hon'ble Supreme Court in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*, reported in *(2013) 12 SCC 649* has observed that if the delay is explained properly, then the delay can be condoned. The Courts are empowered to exercise discretion to condone the delay, if sufficient cause has been explained in order to advance substantial justice through liberal or justice oriented approach. Substantial justice is paramount and pivotal, the technical considerations should not be given undue and uncalled emphasis. The technicalities cannot thwart the course of justice. In my opinion, the petitioners have explained the delay properly. It is further to be noted that the nature of the proceedings is also necessary to be taken into consideration while condoning the delay, which in present case is recovery of maintenance amount.

10. Admittedly, the petitioners were granted maintenance and therefore, they filed the execution proceedings for recovery of the maintenance amount. Under such a situation, the Family Court ought not to have refused to condone the delay, that too on a technical ground. In view of the above and considering the facts and circumstances of the case, in the interest of justice, I am inclined to allow the petition.

11. Accordingly, the writ petition is allowed. Hence, the following order :

a] The impugned order dated 14.07.2025 passed by the learned Judge, Family, Court at Akola at Exh.-1 in Cri. M.A. No. 01/2023 is quashed and set aside.

b] The delay of 139 days caused in filing application for restoration of E.R. No. 74/2019 is condoned.

c] The Family Court, Akola shall pass appropriate order on the application for restoration of the execution proceedings.

12. Rule is made absolute in the aforesaid terms.

(M. M. NERLIKAR, J.)

Diwale