

MHPA010027842022



Presented on : 13-10-2022
Registered on : 13-10-2022
Decided on : 17-11-2022
Duration : 0 yrs, 1M , 4 D

IN THE COURT OF DISTRICT JUDGE-4, PARBHANI.
{Shri S.G.Borlepwar}

Civil Misc. Application No.141/2022

Exh. No.____

- 1- Ravi s/o Piraji Bhene
Age 30 years, occupation Labour
R/o Satephal Taluka Purna Dist.
Parbhani.
- 2- Durga w/o Ravi Bhene
Age 21 years, occupation Household
R/o as above.

..Applicants.

//Versus//

N I L.

..Non-applicant.

Claim:-

Under Section 5 of Limitation Act.

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Mr. D.S. Dakhore,Adv. for applicants.
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J U D G M E N T

{Delivered on 17th November,2022}

Applicants filed this application for condonation of delay in filing appeal against order dated 19.07.2022 passed by Civil Judge (Senior Division), Parbhani in HMP No.32/2022, wherein the said

HMP was dismissed in view of pursis Exh.9 filed by husband and thereby husband withdrew the consent to the petition filed for mutual divorce under section 13(b) of the Hindu Marriage Act.

02. In brief, it is contention of the applicants that they intent to file appeal against the said order. There is delay of one month and twenty four days. The delay is not intentional. Therefore, delay be condoned.

03. The Learned Advocate for applicants submitted that period of 30 days is mentioned in the application but in fact 90 days period is provided to challenge the said order. He also submitted that as per section 28 of the Hindu Marriage Act, this Court has jurisdiction to entertain and try the appeal and as per section 28(4) of the said Act appeal can be preferred within 90 days from the date of decree or order.

04. The said section 28 of the Hindu Marriage Act runs as under.

"Section 28:- Appeals from decrees and orders.

(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(2) Orders made by the court in any

proceeding under this Act under section 25 or section 26 shall, subject to the provisions of subsection (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a [period of ninety days] from the date of the decree or order.]"

05. The said order is dated 19.07.2022. This application is filed within 90 days from the date of order. Therefore, there is no question of condonation of delay. So, application is liable to be dismissed. Hence, following order.

Order.

Criminal M.A.No.141/2022 filed for condonation of delay against the order dated 19.07.2022 passed below Exh.1 in H.M.P. No.32/2022 by Civil Judge(Sr.Division) Parbhani for condonation of delay is dismissed as there is no delay in filing appeal.

Date : 17.11.2022

(S.G.Borlepwar)
District Judge-4, Parbhani.

Dictated on:17.11.2022

Typed on:21.11.2022

Checked on:21.11.2022

Signed on:21.11.2022

(S.G.Borlepwar)
District Judge-4, Parbhani.