

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

918 CIVIL APPLICATION NO. 10773 OF 2023  
IN FCA/59/2023  
WITH  
FAMILY COURT APPEAL NO. 59 OF 2023

PALLAVI SUSHIL CHAVAN  
VERSUS  
SUSHIL NARSING CHAVAN AND OTHERS

...  
Advocate for Applicant : Mr. Jarare Prasad Devidas  
Advocate for Respondent Nos. 1 to 3 : Mr. Shinde Chandrakant K.

...  
CORAM : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.  
DATE : 27 SEPTEMBER 2024

**PER COURT :**

This is an application of seeking condonation of delay of 446 days in preferring the appeal under Section 19 of the Family Court Act.

2. We have heard both the sides and perused the papers. The petitioner who is the wife of the respondent no. 1 has been seeking custody of the two children in the light of the provisions contained in Guardian and Wards Act and is challenging the order passed by the Family Court refusing to allow the petition.

3. Considering the nature of the dispute and in the light of the fact that the petitioner is stated to have continued to exercise her right of visitation, technicalities of delay should not hamper the right to seek custody.

4. It is trite as laid down in the catena of judgment including *Land Acquisition Officer, Anantnag and Another Versus Mst. Katiji and others*, AIR 1987 SC 1353 and *Ramlal, Motilal and Chhotelal Versus Rewa Coalfields Ltd.*, AIR 1962 SC 361, the petitioner was not to gain anything by allowing her cause to be defeated by efflux of time. Though she was remiss in even moving the application for obtaining certified copy, in as much as, she moved such application after a year of passing of the judgment and order under challenge, in our considered view it would be too harsh to defeat her right to prefer an appeal on the ground of limitation.

5. The application is allowed. Delay is condoned. Register the appeal.

6. Issue notice to the respondents in the appeal. Learned Advocate Mr. Shinde, waives service for the respondents in the appeal as well.

7. List the Appeal for admission hearing on 23 October 2024.

[ SHAILESH P. BRAHME, J. ]

[ MANGESH S. PATIL, J. ]