



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 3363/2024

Kailash S/o Late Jagdish Mali, Aged About 38 Years, R/o House No. 1189/15 Maharishi Colony, Kalka Mata Road, Pahada, District Udaipur (Rajasthan)

----Appellant

Versus

Shrimati Vijayalata W/o Kailash Mali, Aged About 33 Years, Daughter Of Kishanlal Residence Of 1189/15 Maharshi Colony, Kalka Mata Road, Pahada, District Udaipur (Rajasthan) At Present Mavli Road, Dabok Circle, Near Shiv Temple Dabok, Tehsil Mavli, District Udaipur Rajasthan

----Respondent

For Appellant(s)	:	Mr. Rajendra Singh Rathore Mr. Basant Kumar Meena
For Respondent(s)	:	

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL**

Order(Oral)

24/03/2026

Per : Arun Monga, J

1. Appellant seeks condonation of delay of 143 days in filing the accompanied appeal. For the reasons stated hereinafter, this is not a fit case where discretion to condone the delay ought to be exercised.
2. Appeal is directed against judgment and decree dated 20.04.2024 passed by learned Judge, Family Court No.2, Udaipur in Family Original Case No.15/2022, vide which the learned Family court has allowed the divorce petition of respondent-wife filed under Section 13A of Hindu Marriage Act.

2.1 It appears that the learned Family Court, while granting the divorce decree between the parties, did not provide any alternative relief under Section 13A of the Hindu Marriage Act. Therefore, the reference to Section 13A appears to be a typographical error and should be read as Section 13.

3. The explanation for seeking condonation is totally mechanical and there seems to be no application of mind. No specific details or day to day explanation have been given as to why the delay took place.

4. For ready reference paras No.1 to 3 of the application are as below:

"1- That the appellant has filed the instant Civil Miscellaneous Appeal against the judgment and decree dated. 20.04.2024 passed by Learned Family Court Number 2, Udaipur (Rajasthan) vide which learned Family court allowed the application of the applicant filed under section 13 of the Hindu Marriage act and passed the judgment and Decree.

2- That the Appellant is lay man and is not aware of the law of Limitation, he was not aware that the time is prescribed for filing of appeal before the Hon'ble Court.

3- That the Appellant approached the advocate and requested to challenge the said Judgment and Decree, who informed him about the delay caused in filing of appeal and told appellant that there is prescribed limit for filing the appeal, but appellant requested to file the appeal and request the Hon'ble Court to condone the delay in filing the appeal. Thus, the delay caused in filing the Civil Miscellaneous Appeal is bona-fide, unintentional and is due to unavoidable circumstances thus, deserves to be condoned."

5. Learned counsel for the applicant argues that the delay in filing the accompanied appeal is bona fide and unintentional for the reasons stated in the application.

6. Having gone through the contents of the application seeking condonation of delay in filing the appeal, we are unable to proceed ourselves with the grounds taken therein. Not only there is no plausible reasoning and/or explanation given qua day to day delay cause which beyond the control of the applicant to file the appeal

but even otherwise a complete moonshine defense has been taken that appellant is a layman and he is not aware of the law of the limitation.

7. We have seen the affidavit deposed by him wherein his signature in English and therefore, it does appear that he has the basic education and also the awareness of what respondent intended to achieve by filing a petition under Section 13 of the Hindu Marriage Act. Having failed there, he seems to have initially acquiesced with the same but as an afterthought had filed the appeal taking his chance, in case he succeeds in the same.

8. Qua the condonation of delay, reference may be had to Apex Court judgment in **Ramlal and others Vs. Rewa Coalfields**

Ltd.¹ Relevant extract of the same is reproduced hereinbelow:-

"7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge and this legal right which has accrued to the decree holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in trial behalf should be exercised to advance substantial justice."

9. Reference may also be had to another Apex Court judgment in **Ajit Singh Thakur Singh v. State of Gujarat**,² wherein it is observed thus:-

".....it is true that a party is entitled to wait until the last day of limitation for filing an appeal, but when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which

1 1962 AIR (SC) 361

2 AIR 1981 SC 733

may further delay the filing of the appeal, but that the limitations has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay."

10. Moreover, we have also had the occasion to go through the impugned order and judgment passed by the learned Family Court. English translation of relevant portion of which reads as under:-

"In cross-examination, the respondent admitted that even at the funeral of the deceased child, he did not inform the applicant family. If no assault had occurred and the child's death was due solely to the applicant physical condition, he would have informed her family before the last rites, which was his social and moral duty.

Apart from the respondent's statements, evidence was presented from N.A.D.2 Devilal, N.A.D.3 Sita Devi, and N.A.D.4 Shanta Devi. Their cross-examination revealed that the affidavits were typed by the respondent, and the witnesses only signed them. Sita Devi admitted she was asked to appear as a witness for divorce, and Shanta Devi stated that she was unaware of the dates or details mentioned in the affidavits.

The above statements make it clear that the affidavits were prepared by the respondent and not by the witnesses themselves. It also shows that the respondent desired divorce and had used witnesses to support his case. Even after the child's death, the respondent received no assistance from the witnesses, nor do they corroborate his statements.

The respondent filed proceedings for restitution of conjugal rights, during which the applicant expressed her willingness to live with the respondent, indicating that she had previously left due to cruelty. This shows that even before the incident of 03.11.2019, the applicant had been subjected to cruelty by the respondent.

From the above discussion, it is clear that the applicant, Mrs. Vijaylata, was subjected to continuous physical and mental cruelty by the respondent, Kailash, after marriage. The applicant also filed a dowry harassment case. Therefore, the applicant has successfully established her allegations."

11. We find that the impugned order is based on due appreciation of the evidence adduced before the Court and cogent reasoning thereof has been given. We find ourselves in agreement that the views expressed therein and even on merits thus, we are unable to persuade ourselves to interfere under appellate jurisdiction.

12. Aside from the above, the appellant's lackadaisical attitude in pursuing this appeal is evident from the considerable delay initially caused in filing the appeal. When this Court issued notice on the application of condonation of delay, he simply chose to not even file the P.F. to cause service.

13. The matter was infact taken up yesterday when none appeared for the appellant and in the interest of justice, the matter was kept today.

14. Upon resumed hearing, no satisfactory response has come forth for taking appropriate steps which were required under the law.

15. On all counts, as an upshot, the application as well as the appeal being bereft of merits, are dismissed.

16. Any other applications also stand disposed of.

(SUNIL BENIWAL),J

(ARUN MONGA),J

88-Anshul/-