

Court No. - 39

Case :- FIRST APPEAL DEFECTIVE No. - 425 of 2023

Appellant :- Meenakshi Goswami

Respondent :- Sunil Kumar

Counsel for Appellant :- Arun Kumar Sharma

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri Arun Kumar Sharma, learned counsel for the appellant and perused the record.
2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984, against the *ex parte* order dated 16.02.2019 passed by the Principal Judge, Family Court, Meerut in Case No. 39 of 2018 (Sunil Giri Vs. Smt. Minakshi). By that order, the learned court below has granted *ex parte* decree of divorce in favour of the respondent.
3. The appeal has been presented carrying a delay of 1635 days. As to delay, it has been submitted since the proceedings were wholly *ex parte* and that *ex parte* proceeding arose on certain misrepresentations made by the respondent as to service of notice on the present appellant, the present appellant was never aware of the decree dated 16.02.2019.
4. Without testing the correctness or otherwise submissions advanced by learned counsel for the appellant and leaving it open to the learned court below to draw its judgement on the strength of record before it, on the issue of prior service of notice, we provide, the appellant may apply for recall of the *ex parte* judgement and decree dated 16.02.2019.
5. In the given facts, it may be better and more efficacious that the appellant may pursue the remedy of recall before the learned court below itself before we may attempt to offer any consideration on the issue whether notice of the proceedings in Case No. 39 of 2018 was validly served on the appellant.

6. On such suggestion, learned counsel for the appellant prays, he may be permitted to withdraw the present appeal with liberty to pursue his remedy afresh, if cause survives.

7. Present appeal is accordingly **dismissed as withdrawn**.

8. Let certified copy of the impugned judgement and decree dated 16.02.2019 be returned to the learned counsel for the appellant within a period of one week.

Order Date :- 22.11.2023

Abhilash

(Shiv Shanker Prasad, J.) (S. D. Singh, J.)