

Court No. - 39

Case :- FIRST APPEAL DEFECTIVE No. - 448 of 2023

Appellant :- Smt. Soni

Respondent :- Vinod Kumar Gupta

Counsel for Appellant :- Kameshwar Singh, Sudhanshu Kumar Singh

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

In re : C.M. Delay Condonation Application No. 02 of 2023.

1. The appeal has been presented carrying a short delay of 06 days.
2. Cause shown sufficient.
3. The delay in filing the appeal is condoned.
4. The application is allowed.

Order on Appeal.

5. Heard learned counsel for the appellant and perused the record.
6. Present appeal has been filed under Section 19 of the Family Courts Act, 1984, arising from the order dated 09.08.2023 passed by learned Additional Principal Judge, Family Court, Ballia, in Misc. Case No. 58 of 2019 (Soni Vs. Vinod Kumar Gupta). By that order, the learned court below has rejected the application filed by the applicant under Order IX Rule 13 CPC on the ground of delay.
7. Having heard learned counsel for the appellant and perused the record, we find no good ground to offer any interference. Undisputedly, the parties were married in the year 2011. The respondent instituted the proceeding for dissolution of marriage in the year 2014. The order sheet of the learned court below records

that service was effected. Yet, the appellant never appeared in the proceeding before the learned court below. In such circumstances, by ex-parte judgment and order dated 19.05.2015, the learned court below had dissolved the marriage between the parties. More than 4 years thereafter, an application under Order IX Rule 13 CPC was filed along with an application under Section 5 of Limitation Act, on 04.12.2019.

8. Thus, undisputedly, parties were living separately for a long period of time. On query made, learned counsel for the appellant fairly states, appellant never instituted any proceeding for restitution of conjugal rights. Though she was living separately from her husband since 2014-15, no efforts were made to appear in the divorce case proceedings. 5 years thereafter she instituted the restoration application but still she did not file any proceeding for restitution of conjugal rights. Plainly, marriage between the parties is dead for more than a decade. The reason for condonation of delay has rightly been disbelieved. The learned court below has rightly not felt satisfied as to the sufficiency of the reason seeking condonation of delay.

9. In the entirety of the facts and circumstances of the case noted above, we find no merit in the appeal. It is accordingly dismissed.

Order Date :- 4.12.2023

SA

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