

Court No. - 39

Case :- FIRST APPEAL No. - 1324 of 2023

Appellant :- Rakhi Tongar

Respondent :- Vipin Kumar Nagar

Counsel for Appellant :- Anupam Dubey

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Anupam Dubey, learned counsel for the appellant and perused the record.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984, arising from the order dated 30.09.2023 passed by the learned Principal Judge, Family Court, Gautam Budh Nagar. By that order, the learned court below has rejected the application being Paper No. 30-Ga filed by the appellant, seeking recall of PW-1.

3. Having heard learned counsel for the appellant and having perused the record, on the face of it, the learned court below has completely erred in observing that the proceedings were instituted under Section 125 Cr.P.C. The order having been passed in Case No. 561 of 2022 (Vipin Kumar Nagar Vs. Smt. Rakhi Tongar), a copy of which has been annexed as Annexure No. 1 to the present appeal, leaves no doubt that those are proceedings for divorce instituted by the respondent.

4. In view of the above mistake, we leave it open to the appellant to make a fresh application before the learned court below to recall the impugned order dated 30.09.2023 and the order dated 11.08.2023, after making proper disclosure of the question and/or line of questioning for further cross examination of the appellant.

5. If such application is filed within a period of two weeks from today alongwith a copy of this order, the learned court below may proceed to pass appropriate order, keeping in mind the observation made above.

6. With the aforesaid observation, present appeal is **disposed of**.

Order Date :- 7.12.2023

Abhilash

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