

Court No. - 12

Case :- APPLICATION U/S 482 No. - 11896 of 2023

Applicant :- Dhirendra Kumar Shrivastava

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt.
Lko. And Another

Counsel for Applicant :- Sumit Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. Present application has been moved by the applicant for quashing of the order dated 08.09.2022 passed by Additional Sessions Judge, Room No.5, Pratapgarh in Criminal Misc. Case No.304/2019 as well as order dated 25.10.2018 passed by Additional Chief Judicial Magistrate/F.T.C.-II, Pratapgarh in Complaint Case No.1244/2017 under Section 12 of D.V. Act.
3. Learned counsel for the applicant submitted that the marriage of applicant was solemnized with the private respondent but due to some trivial issues, she filed application under Section 12 of DV Act which was lodged in favour of private respondent by the trial court on 25.10.2018, against which, an appeal was preferred by the applicant before the Appellate Court under Section 29 of DV Act and the case was listed before the Appellate Court on 08.09.2022 but counsel of applicant could not appear on the date fixed, as a result, appeal was dismissed for want of prosecution. He further submitted that for the fault of his counsel, applicant should not be victimized, therefore, order dated 08.09.2022 may be set aside and the appeal be decided on the basis of merit.
4. Learned A.G.A. opposed the prayer of applicant but he does not dispute this fact that the appeal was preferred by the applicant before the Appellate Court which was dismissed for want of prosecution.
5. Considering the submissions of learned counsel for the parties, going through the contents of application, as well as other relevant documents, as it is evident that appeal was preferred by the applicant against the order passed by the trial court under Section 12 of DV Act on 25.10.2018, as it is well settled that the client should not be victimized for his counsel's fault, therefore, this Court is of the view that the order dated

08.09.2022 is liable to be set aside.

6. Accordingly, the application is disposed of and order dated 08.09.2022 passed by Additional Sessions Judge, Room No.5, Pratapgarh in Criminal Misc. Case No.304/2019 is hereby set aside restoring the appeal at its original number with the cost of Rs.10,000/- and the same shall be remitted to the private respondent forthwith.

Order Date :- 7.12.2023

V. Sinha