

Serial No. 04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC(FA) No. 20 of 2023

Date of Decision: 01.05.2024

Shri. Rohit Kalia
S/o Shri. Ram Swarup Kalia,
R/o RZ/A-49 Anup Nagar,
Uttam Nagar, New Delhi

:::Applicant

-VS-

Smti. Meenakshi Yadav,
D/o Shri. Dhanwant S. Yadav,
Residing at Star Cement Campus,
Lumshnong, Khliehriat, East Jaintia
Hills District, Meghalaya

Presently residing at R/o Flat No. 1002,
Milan Coop GHS Sector-39, Gurgaon,
Haryana-122001

:::Respondent

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Applicant(s) : Mr. Philemon Nongbri, Adv.

For the Respondent(s) : Mr. P. Yobin, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER (ORAL)

1. This is an application for condonation of the delay of 823 days in filing the connected First Appeal under Section 28 of the Hindu Marriage Act 1955, against Judgment and Order dated 16.05.2019, passed by the learned Court of the Additional Deputy Commissioner (J), Khliehriat, in Mat (Divorce) Suit No. 3 of 2018, granting a decree of divorce to the respondent. The applicant in the petition has detailed the sequence of events and has tendered explanations for consideration of this Court, as to the reasons for the delay.

2. Mr. Philemon Nongbri, learned counsel for the applicant has submitted that the applicant had been convicted and sentenced in September 2018, to five years rigorous imprisonment at District Jail, Gurugram, for offences under Section 307 IPC, and during his period of incarceration, the respondent wife had instituted divorce proceedings on 03.12.2018, which went ex-parte against the applicant, and resulted in Judgment and Order dated 16.05.2019, allowing the dissolution of marriage, and granting the respondent a permanent alimony of Rs.15,00,000/- (Rupees Fifteen Lakhs) only. It is submitted that, a review being Review Petition No. 1 of 2019,

was filed by the respondent seeking review of the Judgment and Order dated 16.05.2019, and in the said review, notice was received by the applicant who then entered his appearance, which was taken note of by the Court below vide its order dated 30.08.2019. He submits that the Review Application was then rejected, and disposed of by order dated 31.03.2022, and though other supplemental proceedings were taken up for recall of the ex-parte judgment, the same did not result in any favourable orders. The main points he contends are that, in the main Divorce Suit, which had been decreed ex-parte, it was an admitted fact that the address of the applicant was incorrectly shown therein, which had resulted in him not being served, thus the matter proceeded ex-parte, and that the other reason this Court could not be approached on time was due to COVID restrictions, which the Supreme Court in this respect, had passed an order on 10.01.2022, excluding the period 15.03.2020 to 28.02.2022, to be reckoned for the purposes of limitation. He submits that as the applicant was in prison, and due to the other factors earlier mentioned, sufficient reasons and cause had been shown for the delay to be condoned by this Court, and the Appeal admitted for consideration.

3. Mr. P. Yobin, learned counsel for the respondent has strongly resisted the condonation application and has submitted that the actual delay is 1512 days and not 823 days as submitted by the applicant. He submits that the

applicant was well aware about the order dated 16.05.2019, as he had entered appearance in the Review Application filed by the respondent, on 30.08.2019, before the same Court and in fact, that the applicant had knowledge is also reflected in an order dated 19.11.2019 of the Punjab and Haryana High Court. He therefore submits that, the applicant being aware about the Judgment dated 16.05.2019, as far back as on 30.08.2019, and having preferred the First Appeal only on 05.10.2023, no sufficient cause had been made out to warrant the exercise of discretionary powers of this Court, to condone the delay. The learned counsel has also submitted that the applicant had been convicted for trying to set on fire the respondent wife, which resulted in her sustaining severe burns, which required extensive treatment, which involved considerable costs.

4. Heard the learned counsel for the parties. This Court for the purposes of ascertaining the correct facts, had called for the records from the Court below. On examination of the same, it is seen that the Divorce Suit was instituted on 03.12.2018, and notice was issued to the respondent. Though it has been submitted by the learned counsel for the applicant that the address was wrong, from the service report, it is seen that notice has been issued care of (C/o) the Superintendent of Bhondsi, Gurugram. Notwithstanding this fact however, the records further show that the applicant had entered appearance in the Review Petition filed by the respondent, which was

recorded by the Court below in its order dated 30.08.2019. As such, the date of knowledge of the order dated 16.05.2019, can be taken to be from the date, the applicant received copies of the Review Petition. The order of the Supreme Court for excluding the period 15.03.2020 to 28.02.2022, will also not come to the aid of the applicant, inasmuch as, the knowledge of the decree of divorce was over 7(seven) months, before 15.03.2020, and his approach to this Court by way of the connected First Appeal is only on 05.10.2023, a period of over one and a half years or 18(eighteen) months thereafter.

5. Taking these facts into consideration, the reasons given in the condonation application even taking into consideration, the imprisonment of the applicant, the period of COVID and supplemental proceedings which had been closed, no sufficient cause has been made out for condonation of the delay of 823 days in preferring the First Appeal.

6. Accordingly, for the reasons aforesaid, this Application for condonation of delay is rejected.

7. No order as to costs.

8. Records to be transmitted back to the Lower Court.

Judge

Meghalaya
01.05.2024
"D.Thabab-PS"