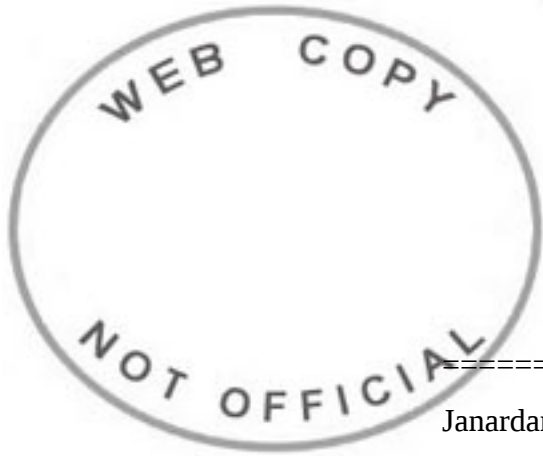




IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.595 of 2012

With

Interlocutory Application No. 5735 of 2012

And

Interlocutory Application No. 5736 of 2012

In

Miscellaneous Appeal No.595 of 2012

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Janardan Prasad @ Janardan Prasad Srivastava S/O Late Sukhdeo Prasad
Resident Of Mohalla 112 Kotha Parcha, P.S. Muthiganj, District Allahabad.

.... Opp. Party.... Appellant

Versus

1. Smt. Veena Srivastava W/O Shri Janardan Srivastava
 2. Tanuja Srivastava alleged daughter of Janardan Prasad Srivastava
- Respondents no. 1 and 2 are resident of Mohalla Bari Patan Devi, P.S.
Alamganj, District Patna.

.... Petitioners.... Respondents

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Appearance :

For the Appellant : Mr. Shri Prakash Srivastava and
Mr. Sanjeev Nikesh, Advocates

For the Respondents : Mr. Markandeya Singh and
Mr. Anil Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 09-03-2015

Heard learned counsel for the parties.

2. Appellant-husband has filed this Appeal assailing the judgment dated 17.11.2006 passed by learned Additional Principal Judge, Family Court, Patna in Miscellaneous Case No. 6 of 1998 whereunder learned Additional Principal Judge has directed the appellant to pay a lumpsum amount of Rs. 400000/- (Four Lakhs) to respondent no. 1 for the marriage of respondent no. 2 within a reasonable time from the date of the order, failing which the respondents have been given liberty to take suitable steps for realization of the said amount from the appellant herein at his cost.

3. Aforesaid Appeal has been filed on 30.08.2012, that is, after about six years from the date of the impugned order. It is submitted on behalf of the appellant that earlier appellant had filed Cr.W.J.C. No. 852 of 2009 before this Court assailing the aforesaid order dated 17.11.2006 in which notice was issued and after service of notice the writ petition was held to be not maintainable under order dated 03.08.2012 and in the circumstances, the petitioner withdrew the said writ petition to ventilate his grievance before appropriate statutory forum.

4. Having withdrawn the writ petition the present Appeal was filed on 30.08.2012. The impugned order was passed on 17.11.2006. The petitioner approached this Court in the aforesaid writ



petition in the year 2009, that is, after about three years. It is submitted on behalf of the appellant that a delay of three years in approaching the writ court may be condoned as the petitioner has been bona fide prosecuting the writ petition in which this Court also issued notice and in appreciation of such fact this Court may condone the delay in filing the present Appeal. The delay in filing the Appeal after the writ petition was held not maintainable even if condoned the petitioner has no answer as to why did he not approach the writ court for about three years from the date of the impugned order. In this connection, we specifically asked the learned counsel for the appellant but learned counsel submitted that he may be given opportunity to file affidavit explaining the delay of three years between the date of the impugned order and filing of the writ petition.

5. We do not think it proper to grant such indulgence as the fact remains that the impugned order was passed after notice and appearance of the appellant considering his written statement as such he had full knowledge about the proceeding taken by the court below yet he chose to approach the writ court after about three years.

6. In the circumstances, we are not inclined to condone the delay in filing the present Appeal and accordingly Interlocutory Application No. 5735 of 2012 is dismissed. As we have chosen not to condone the delay in filing the Appeal, the Appeal as also

Interlocutory Application No. 5736 of 2012 filed for stay of the
impugned order are also dismissed.



(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

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