

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.5554 OF 2015

ORDER:

Respondent in I.A. No.882 of 2014 in FCOP No.65 of 2014 is the revision petitioner.

The parties to this revision petition are the husband and the wife respectively. The revision petitioner filed the FCOP for grant of divorce against the respondent herein. The Family Court ordered notice and for appearance of respondent on 29.03.2014. The respondent did not appear on the date of first hearing resulting in *ex parte* decree dated 29.09.2014. Thereafter, respondent herein filed I.A. No.882 of 2014 for condoning short delay of 12 days in filing the application to set aside the *ex parte* decree.

The revision petitioner opposed the prayer. The Family Court framed the following point for consideration:

Whether the delay of 12 days in filing the application to set aside the *ex parte* decree dated 29.09.2014 can be condoned?

The learned Judge has answered the point in the affirmative. Hence the revision.

Learned counsel for the petitioner contends that the order impugned does not record finding that the respondent has shown each day's delay in filing the application to set aside the *ex parte* decree and that the request for condonation of delay ought to fail on what is stated in the affidavit.

I have taken note of the submissions of learned counsel for the petitioner and perused the material available on record.

Through the order impugned in the revision, the Family Court considered the delay of 12 days in filing the application and by taking note of the short delay, in my considered view, though the finding recorded by the Family Court is short, but in the circumstances of the case, the crucial aspect that resulted in delay in filing the application is adverted to and reasons for condoning are stated. Having regard to the status of respondent, to give an opportunity to the respondent, in a matrimonial matter, the discretion is rightly and properly exercised by the Family Court. I see no reason to interfere with the order impugned in the revision. The revision fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:18.12.2015
Stp