

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**C.M. No. 12019-C of 2014 &
RSA No. 5099 of 2014**

Date of decision: 03.09.2015

Avtar Singh @ Tar Singh

...APPELLANT

VS.

Amarjit Kaur and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Madan Sandhu, Advocate,
for the applicant/appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 12019-C of 2014

Prayer in this application is for condonation of delay of 38 days
in re-filing the appeal.

The reason assigned for the delay is that after filing of the
appeal within limitation, Registry of the High Court raised some objections
and the case file was returned on 07.06.2014. Inadvertently, the paper-book
was put in another brief which could not be located and ultimately, the same
was found on 17.08.2014. After removing the objections, the same has
been re-filed, which has resulted in delay of 38 days in re-filing the appeal.
The application is supported by the affidavit of the clerk of the counsel.

For the reasons mentioned in the application, the same is
allowed. Delay of 38 days in re-filing the appeal is condoned.

RSA No. 5099 of 2014

The suit was filed by the respondents-plaintiffs under the Hindu Adoption and Maintenance Act for grant of maintenance allowance at the rate of ₹ 5,000/- per month from the appellant-defendant by creating charge over the land owned by him. The said suit was decreed by the Civil Judge (Senior Division) Mansa on 14.12.2012 and the appeal preferred by the appellant-defendant was dismissed by the learned District Judge, Mansa on 17.04.2014, which has led to the filing of the present appeal.

It is the contention of the counsel for the appellant that the findings recorded by the Courts below cannot be sustained as they have not appreciated that the application under Section 9 of the Hindu Marriage Act was decided ex-parte against respondent-plaintiff No. 1 but still she did not join his company. The present suit thus is barred and, therefore, could not have been entertained by the Courts below. He thus, prays that the appeal be allowed by setting aside the judgments passed by the Courts below.

I have considered the submissions made by the counsel for the appellant and have gone through the judgments passed by the Courts below.

The decree under Section 9 of the Hindu Marriage Act against the respondent-plaintiff No. 1 cannot be a bar for filing the suit for maintenance under the Hindu Adoption and Maintenance Act. The decision on this aspect by the learned Courts below thus, cannot be faulted with. The Courts below have rightly and correctly appreciated the evidence, which has been led by the parties. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be just and reasonable, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present

appeal, which requires consideration of this Court.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

September 03, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE