

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.732 of 2013

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Sunita Devi, W/O Mahesh Prasad Verma, D/O Chandrika Prasad, resident of Mohalla-Birla Colony, Plot No. A-7, Phulwarisharif, P.S. Phulwarisharif, District Patna.

.... Appellant

Versus

Mahesh Prasad Verma, S/O Damari Prasad, resident of Mohalla-Bangali Tola, P.S. Samastipur Town, District Samastipur.

.... Respondent

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 18-02-2016

I.A.No.2583 of 2014.

The Interlocutory Application has been filed for condonation of delay of three years, one month and 21 days in filing the appeal. It is stated in the application that the appellant came to know about the judgment dated 28.08.2010 under appeal on the basis of rumour in the last week of July, 2013 and after verification she was confirmed of passing of the impugned judgment and thereafter applied for certified copy of the impugned judgment and after getting the same appeal was filed.

A counter affidavit has been filed to the application for condonation in which it is stated that a petition under Section 13 of the Hindu Marriage Act was filed on 08.06.2009 and notices



were issued to the appellant who appeared on 01.04.2010 after which the reconciliation proceeding was started which ultimately failed on 10.05.2010. The appellant was thereafter called upon to file the written statement but instead of doing so, she filed a petition under Section 24 of the Hindu Marriage Act on 31.05.2010 and she was physically present in the court, which petition was also partly heard. Thereafter, the matter was adjourned to 14.06.2010, 29.06.2010 and 12.07.2010 but the appellant did not appear in the said case. Ultimately, the appellant was debarred from filing the written statement and the case was fixed for ex-parte hearing and after examination of witnesses, etc. the judgment was delivered on 28.08.2010 and the decree subsequently prepared.

It is further stated that the appellant admittedly went to the Mahila Help Line, Patna, on 18.04.2013 which issued notice on 18.04.2013 to the respondent and thereafter respondent replied on 27.04.2013 annexing copy of the impugned judgment and order of divorce dated 28.08.2010 as a result of which the matter was dropped. It is, thus, submitted that the appellant was aware of the passing of the decree of divorce at least from April, 2013 and false grounds have been taken in the application for condonation of delay that she learnt on the basis of rumour in the last week of

July, 2013 about the judgment under appeal.

It is stated that the respondent remarried in the year 2013 long after passing of the decree of divorce with one Kiran Devi, D/o Mahesh Ram, Dalsingsarai, District-Samastipur and they are living as husband and wife since then. The Counter Affidavit/Reply of the respondent to the condonation application was served upon the learned counsel for the appellant on 01.12.2015 but no rejoinder has been filed to the same.

In the aforesaid facts and circumstances, we are of the view that it is not a fit case for condoning the delay in filing the appeal. The application for condonation of delay is, accordingly, dismissed.

In view of the dismissal of the limitation petition, the appeal shall also stand dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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