

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.94 of 2015

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Mrs. Jyotsna Singh, Wife of Kumar Vikrant, Daughter of Late B.K. Singh.
Resident of Mohalla - B-Area, Mithapur, Patna - 800001, P.S.- Jakkanpur,
District - Patna. Appellant

Versus

Mr. Kumar Vikrant. Son of Sri Ram Ayodhya Prasad Yadav, Residing at
Flat No. 607, SIDBI Officer's flats, Plot No. 11/12, Sector 12, Vashi, Navi
Mumbai - 400703. Respondent

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Appearance :

For the Appellant/s : Mr. Hamendra Pd. Singh, Sr. Advocate
Mr. Anil Kumar, Advocate

For the Respondent/s : Mr. Nawal Kishore Singh, Advocate
Mr. Chandra Mauli Pd. Singh, Advocate
Mr. Jitendra Nath Tiwary, Advocate
Mr. Binay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

4 28-11-2016 A supplementary affidavit has been filed by the respondent giving certain relevant dates. Learned Senior Counsel for the appellant does not dispute the dates as given in the affidavit. The relevance of dates we will discuss.

2. The parties were married according to Hindu customs and rites on 10.12.2005. On 11.04.2006, allegedly, the appellant wife being mistreated left her matrimonial residence and moved to her sister's house at Panvel in Mumbai. Not returning and not agreeable to return, the sole respondent, the husband, filed an application for divorce at Mumbai, which pursuant to the orders of



the Apex Court, was transferred to Patna and it was so registered as Matrimonial Case No. 472 of 2008 before the Additional Principal Judge, Family Court, Patna. After notice to all the parties and hearing the parties, vide judgment, dated 24.11.2014, the Additional Principal Judge, Family Court, Patna allowed the case and passed the judgment dissolving the marriage. The judgment is dated 24.11.2014. He further held that the wife, who was respondent therein and appellant herein, would be entitled to a permanent alimony of Rs. 10 lacs and a litigation cost of Rs. 15 thousand was also awarded. The judgment having been so passed, the husband, on 10.12.2014, deposited the said amount as awarded in the judgment as also arrears of maintenance in the bank account of the wife. Decree was actually sealed and signed on 20.12.2014. Though it makes little difference, because as per recent amendment to Code of Civil Procedure, the date of decree would be the date of judgment. Even for the sake of argument, if we take the later date, i.e. the date of decree, to be the relevant date to compute limitation for preferring the appeal, the appeal ought to have been filed by 19th January, 2015 in terms of Section 19 of the Family Courts Act which provides an appeal to be filed within 30 days. No appeal having been filed, there being no notice of appeal to be filed, the money having already deposited in the bank



account of the wife and there being no intimation about return thereof or non-acceptance thereof, the husband, then, on 05.05.2015, undisputedly, without notice of any proceedings, solemnized second marriage. The appeal, in terms of Section 19 of the Family Courts Act, was filed before this Court on 01.04.2015. The registry by the stamp report pointed out that it was grossly barred by limitation. Accordingly, I. A. No. 2981 of 2015 for condoning the delay in filing the appeal was filed. The only ground taken for condoning the delay was that seeing the long delay in deciding the case and due to prolong litigation the brother of the appellant-wife, who used to look after the case, became ill and when he recovered from his illness he contacted the lawyer and filed the appeal. Without being aware of the fact whether payment of permanent alimony and litigation cost had already been paid or that the husband had already solemnized second marriage, we issued the notice to the husband, who is the sole respondent herein, in the matter of condonation of delay in filing the appeal and in admission of the appeal to hearing. The fact about payment, second marriage having been solemnized, after waiting for limitation period to expire and without notice of the appellate proceedings, was taken along with an objection, that the second marriage having taken place and the appeal being grossly



barred by limitation, the appeal becomes not maintainable. Reference is made to Section 15 of the Hindu Marriage Act. It is submitted on behalf of the husband that in such circumstances and further because there is no reasonable cause for delay, the delay in filing the appeal should not be condoned and even if condoned, the appeal must now be held to be not maintainable. The appeal in either eventuality should be dismissed.

3. On the other hand learned Senior Counsel, appearing for the wife in support the appeal and condonation application, submits that what was the hurry for the husband to solemnize the second marriage. He should have waited for the appeal notice to be issued. We are at a loss to understand the submission. He further submits that there is genuine and bonafide grounds for delay in filing the appeal, inasmuch as due to prolonged litigation the brother of the wife, who looks after the litigation fell sick and upon recovery he consulted the lawyer and filed the appeal.

4. We have heard the parties at length. Firstly, so far as the interlocutory application for condonation of delay in filing the appeal is concerned, we are satisfied that there is no bonafide or genuine ground to condone the delay. As noted above, there is no plea that wife was unaware of the judgment dated 24.11.2014 granting the decree of divorce. This stand established from the fact



that the judgment having been delivered on 24.11.2014, on the very next day, application for certified copy of judgment was made on behalf of the wife and the certified copy of judgment was delivered on 04.12.2014 itself. The payment of the permanent alimony of Rs. 10 lacs and litigation cost of Rs. 15 thousand, apart from arrears of maintenance, was made by the husband to the credit of the wife's bank account on 10.12.2014. The amount was not returned nor was the husband informed that the wife intended to contest the matter. The decree was signed and sealed on 20.12.2014. Application for certified copy thereof was then made on 19.02.2015 and the same was delivered on 21.02.2015, yet the appeal was filed on 01.04.2015. Thus, to say that the brother of the wife fell ill and could not pursue the matter is not correct. It is not a bonafide cause of delay. Thus, in our view, there is no bonafide ground of condoning the delay in filing the appeal. Accordingly, I. A. No. 2981 of 2015 is dismissed. Consequently, the appeal stands not admitted and consequently dismissed as barred by limitation.

5. However, as learned counsel for the husband has argued that the issue which the learned Senior Counsel for the wife contested and urged, we may note even otherwise, the appeal would now become not maintainable. The reason is simple. The



limitation of 30 days for filing appeal, even taking it from the date of decree, expired on 19.01.2015. Since no appeal was preferred nor the husband was intimated that the appeal was intended to be preferred, the husband waited and solemnized second marriage on 05.05.2015. The appeal was filed on 01.04.2015 and the notice, for the first time, was issued to the husband, the sole contesting respondent, vide order dated 16.08.2016. The appellant-wife does not even urge that she had ever communicated to the husband that the appeal, even though belated, had been filed. Learned Senior Counsel appearing for the wife-appellant does not contest that husband had no notice of the fact of filing of the appeal even though it was belated by almost three months. In such a situation, we are of the view that the appeal itself becomes not maintainable for the simple reason that even if we were to allow the appeal, what would happen to the second marriage. It was a legal marriage when solemnized. Can a husband be said to have two wives as under the Hindu Marriage Act polygamy is prohibited so far as Hindus are concerned. For such a situation, wife has to blame herself.

6. In view of the aforesaid, we have no option but to hold that even if limitation was condoned, the appeal had to be dismissed as not maintainable in view of second marriage

solemnized by the husband without notice of the time bared appeal.

7. We, thus, find no merit in this appeal. It is accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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